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5–12–04 Wednesday
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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–NM–204–AD; Amendment 39–13617; AD 2004–09–27]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that requires a one-time inspection for improper installation of the electrical wiring for the optional lighting in the cabin, and corrective actions if necessary. This action is necessary to find and fix improper installation of the electrical wiring of the basic/optional cabin lighting, which could result in overheating of the wiring and possible smoke/fire in the cabin during an emergency situation. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 16, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 16, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes was published in the **Federal Register** on January 9, 2004 (69 FR 1547). That action proposed to require a one-time inspection for improper installation of the electrical wiring for the optional lighting in the cabin, and corrective actions if necessary.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Request To Add Revised Service Information

One commenter states that there is an error in the section of the proposed AD titled "Explanation of Relevant Service Information," which references Dassault Service Bulletin F50–318, Revision 1, dated June 12, 2002. The commenter states that the correct reference should be Dassault Service Bulletin F50–318, Revision 2, dated January 15, 2003. The commenter also asks that Revision 2 be added to paragraph (a) of the proposed AD.

The FAA acknowledges the commenter's remarks. Since Revision 2 of the service bulletin was not issued until after the proposed AD was published, we referenced Revision 1 in the proposed AD. Revision 2 is essentially the same as Revision 1 of the referenced service bulletin. We have added references to Revision 2 to paragraphs (a) and (b) of this final rule as another source of service information for accomplishment of the specified actions.

### Request To Change Description of Unsafe Condition

The same commenter states that, as written, the unsafe condition specified in the proposed AD is misleading. The unsafe condition states, "This action is necessary to prevent overheating of optional lighting wiring that was improperly installed in the cabin, and consequent smoke/fire in the cabin." The commenter suggests that this wording be changed to read, "This action is necessary to ensure the basic/optional cabin lighting routing and power supply conform to the certification rules." The commenter notes that this language is contained in the referenced service bulletin, and accomplishment of the service bulletin is intended to correct wiring that is installed directly to the batteries, instead of through a dedicated circuit breaker.

We acknowledge the commenter's concern regarding the description of the unsafe condition specified in the proposed AD. The description of the unsafe condition is based on the airworthiness directive issued by the Direction Générale de l'Aviation Civile, which is the airworthiness authority for France. The Discussion section of the proposed AD reads, "The DGAC advises that due to incorrect routing, wiring for the optional lighting in the cabin may be directly connected to the direct power supply line of the battery bus instead of through a dedicated circuit breaker. In this configuration, an electrical current is generated even after the starter generators and batteries are switched off." Although the commenter found the description of the unsafe condition to be misleading, we do not find the commenter's suggested wording to be an adequate description of the effect on the airplane of incorrect routing of the subject wiring. However, we have provided further clarification of the unsafe condition in this final rule. We have changed the statement of the unsafe condition to read, "This action is necessary to find and fix improper installation of the electrical wiring of the basic/optional cabin lighting, which could result in overheating of the wiring and possible smoke/fire in the cabin during an emergency situation."

**Request to Change Cost Impact Information**

One commenter, Dassault Falcon Jet, states that the work hours listed in the proposed AD may be significantly increased if additional wiring alterations are done to the electrical circuit after airplane delivery. The commenter adds that the kits (parts) provided by the manufacturer at no charge were available only through March 2003.

We acknowledge the commenter's concerns; however, additional wiring alterations done to the electrical circuit after airplane delivery are outside the requirements of this AD, thus would not be included in the estimated work hours. In addition, we have been informed by the manufacturer (Dassault Aviation, France) that the kits provided at no charge are available for one year after the effective date of this AD.

**Conclusion**

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

We estimate that 175 airplanes of U.S. registry will be affected by this AD.

It will take about 2 work hours per airplane to accomplish the required inspection at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $22,750, or $130 per airplane.

Should an operator have to modify the optional lighting wiring, it takes about 60 work hours at an average labor rate of $65 per work hour. Required parts would be provided by the manufacturer at no charge. Based on these figures, the cost impact of the modification is estimated to be $3,900 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2004–09–27 Dassault Aviation:** Amendment 39–13617. Docket 2002–NM–204–AD.

*Applicability:* Model Mystere-Falcon 50 series airplanes having serial numbers 2 through 270 inclusive, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To find and fix improper installation of the electrical wiring of the basic/optional cabin lighting, which could result in overheating of the wiring and possible smoke/fire in the cabin during an emergency situation, accomplish the following:

**Inspection**

(a) Within 13 months after the effective date of this AD: Do a detailed inspection (including measurement of electrical current) of the electrical wiring installation for optional lighting in the cabin to determine if any wiring is directly connected to the battery bus. Do all of the applicable actions per the Accomplishment Instructions of Dassault Service Bulletin F50–318, Revision 1, dated June 12, 2002; or Revision 2, dated January 15, 2003.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

**Corrective Actions**

(b) If any electrical wiring is found to be directly connected to the battery bus during the inspection required by paragraph (a) of this AD, before further flight, do all the applicable corrective actions (*e.g.*, modifying the existing wiring, doing a detailed inspection of any modified wiring installation to ensure it matches the wiring diagram, and testing the modified wiring installation) per the Accomplishment Instructions of Dassault Service Bulletin F50–318, Revision 1, dated June 12, 2002; or Revision 2, dated January 15, 2003.

**Alternative Methods of Compliance**

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(d) The actions shall be done in accordance with Dassault Service Bulletin F50–318, Revision 1, dated June 12, 2002; or Dassault Service Bulletin F50–318, Revision 2, dated January 15, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Note 2:** The subject of this AD is addressed in French airworthiness directive 2002–086–036(B) R1, dated March 20, 2002.

**Effective Date**

(e) This amendment becomes effective on June 16, 2004.

Issued in Renton, Washington, on April 27, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10246 Filed 5–11–04; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 335

**[Docket No. 1978N–036T]**

**RIN 0910–AC82**

## Antidiarrheal Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph (FM) for over-the-counter (OTC) antidiarrheal drug products to include relief of travelers' diarrhea as an indication for products containing bismuth subsalicylate. Travelers' diarrhea occurs in travelers and is most commonly caused by an infectious agent. This final rule is part of FDA's ongoing review of OTC drug products.

**DATES:** This rule is effective June 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Robinson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published under 21 CFR 330.10(a)(6) an advance notice of proposed rulemaking to establish a monograph for OTC antidiarrheal drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products, which evaluated these drug classes. FDA published the proposed rule in the **Federal Register** of April 30, 1986 (51 FR 16138), as a tentative final monograph.

FDA discussed a travelers' diarrhea claim for bismuth subsalicylate in the final rule for OTC antidiarrheal drug products (68 FR 18869, April 17, 2003). Travelers' diarrhea is an acute diarrheal illness occurring among travelers, particularly those visiting developing countries where sanitation is suboptimal. Most cases of travelers' diarrhea are caused by infectious agents, acquired through the ingestion of fecally contaminated food and/or water. Bacterial pathogens account for the great majority of episodes. Overall, one of the most common etiologic agents in travelers' diarrhea are enterotoxigenic *Escherichia coli*, which are responsible for 50 to 75 percent of episodes in certain areas of the world. Other recognized enteropathogens can be isolated from most of the remainder of cases, but with great regional differences in prevalence. Viruses (rotavirus, Norwalk-like virus) and protozoa (amebas, Giardia) are collectively responsible for fewer than 10 percent of cases of travelers' diarrhea.

FDA discussed the clinical data for this claim in section II, comment 3 of the final rule for OTC antidiarrheal drug products (68 FR 18869 at 18871). FDA has determined that the data support the use of bismuth subsalicylate in treating the symptoms of travelers' diarrhea. Accordingly, FDA is amending the FM to include an indication ["controls" or "relieves" "travelers' diarrhea"] for OTC antidiarrheal drug products containing bismuth subsalicylate identified in 21 CFR 335.10(a).

### II. FDA's Conclusions on the Comment

In response to the proposal, FDA received one comment, which is on public display in the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The comment agreed completely with the proposal to amend the FM for OTC antidiarrheal drug products to include the additional indication for travelers' diarrhea for products containing bismuth subsalicylate. The comment encouraged FDA to expeditiously amend the FM so this indication can be used on appropriate OTC drug products.

FDA agrees with the comment and is providing that this final rule be effective 30 days after its date of publication.

### III. FDA's Final Conclusions

FDA is amending the FM for OTC antidiarrheal drug products to make the following additions:

- Definitions in 21 CFR 335.3(c): "Travelers' diarrhea. A subset of diarrhea occurring in travelers that is most commonly caused by an infectious agent."
- Indications in 21 CFR 335.50(b)(1) for products containing bismuth subsalicylate: [select one of the following: "controls" or "relieves"] *** "travelers' diarrhea"]. If both "diarrhea" and "travelers' diarrhea" are selected, each shall be preceded by a bullet in accordance with 21 CFR 201.66(b)(4) and (d)(4) of this chapter and the heading "Uses" shall be used.

### IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

FDA concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed in this section of the document, FDA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to provide an additional (optional) claim for OTC antidiarrheal drug products containing bismuth subsalicylate. Manufacturers can add this claim to

their labeling when ordering new product labeling to be in compliance with the OTC antidiarrheal drug products FM. Adding this claim might result in additional product sales but, in any case, is completely optional. Thus, this final rule will not impose a significant economic burden on affected entities. Therefore, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

### V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

### VI. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency concludes that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

### List of Subjects in 21 CFR Part 335

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 335 is amended as follows:

## PART 335—ANTIDIARRHEAL DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 335 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 335.3 is amended by adding paragraph (c) to read as follows:

**§ 335.3 Definitions.**

* * * * *

(c) *Travelers' diarrhea.* A subset of diarrhea occurring in travelers that is most commonly caused by an infectious agent.

■ 3. Section 335.50 is amended by revising paragraph (b)(1) to read as follows:

**§ 335.50 Labeling of antidiarrheal drug products.**

* * * * *

(b) * * *

(1) *For products containing bismuth subsalicylate identified in § 335.10(a).* The labeling states [select one of the following: "controls" or "relieves"] [select one or both of the following: "diarrhea" or "travelers' diarrhea"]. If both "diarrhea" and "travelers' diarrhea" are selected, each shall be preceded by a bullet in accordance with § 201.66(b)(4) and (d)(4) of this chapter and the heading "Uses" shall be used.

* * * * *

Dated: May 3, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–10750 Filed 5–11–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 872

**[Docket No. 2002N–0114]**

## Dental Devices; Reclassification of Root-Form Endosseous Dental Implants and Endosseous Dental Implant Abutments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is reclassifying root-form endosseous dental implants and endosseous dental implant abutments from class III to class II (special controls). Root-form endosseous dental implants are intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. Endosseous dental implant abutments are separate components that are attached to the dental implant and intended to aid in prosthetic rehabilitation. FDA is reclassifying these devices on its own initiative on the basis of new information. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for these devices. FDA is taking this action under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990, the Food and Drug Administration Modernization Act of 1997, and the Medical Device User Fee and Modernization Act of 2002.

**DATES:** This rule is effective June 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Angela E. Blackwell, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The act (21 U.S.C. 301 *et seq.*) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as "preamendments devices." FDA classifies these devices after the agency initiates the following procedures: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as "postamendments devices."

These devices are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. The devices remain in class III and require premarket approval, unless FDA initiates the following procedures: (1) Reclassifies the device into class I or II; (2) issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act; or (3) issues, under section 513(i) of the act, an order finding the device substantially equivalent to a predicate device that does not require premarket approval. As described in section 510(k) of the act (21 U.S.C. 360(k)) and under part 807 of the regulations (21 CFR part 807), FDA determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures. Through premarket notification procedures, a person may, without submission of a premarket approval application (PMA), market a preamendments device that has been classified into class III until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 513(e) of the act governs the reclassification of classified preamendments devices. This section provides that FDA may, by rulemaking, reclassify a device based on "new information." Under section 513(e) of the act, FDA can initiate reclassification or an interested person can petition FDA to reclassify a preamendments device. The term "new information," as used in section 513(e) of the act, includes information developed after the date of the device's original classification. This information could include a reevalution of the original data or information from the time of the device's original classification that was not presented, available, or developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously used by FDA is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F.Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Whether data before the FDA are past or new data, the "new information" to support reclassification under section 513(e) must be "valid scientific evidence," as defined in section 513(a)(3) of the act and § 860.7(c)(2) (21 CFR 860.7(c)(2)). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985).)

FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. When reclassifying a device, FDA can only consider valid scientific evidence that is publicly available. Publicly available information excludes trade secret and confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c).)

## II. Regulatory History of the Device

In the **Federal Register** of May 14, 2002 (67 FR 34416), FDA proposed to reclassify root-form endosseous dental implants and endosseous dental implant abutments from class III to class II (special controls). Root-form endosseous dental implants are intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. Endosseous dental implant abutments are separate components that are attached to the dental implant and intended to aid in prosthetic rehabilitation. Blade-form endosseous dental implants remain in class III and will require the filing of a PMA or product development protocol at a future date.

Also in the **Federal Register** of May 14, 2002 (67 FR 34458), FDA announced the availability of a draft guidance document that FDA intended to serve as the special control for root-form endosseous dental implants and endosseous dental implant abutments, if FDA reclassified them. FDA gave interested persons until August 12, 2002, to comment on the proposed regulation and special controls draft guidance document. FDA received a total of five comments on the proposed regulation and draft guidance document.

## III. Summary of Final Rule

In accordance with § 860.84(g)(2) of the regulations, FDA is reclassifying root-form endosseous dental implants and endosseous dental implant abutments into class II. FDA is revising the classification of endosseous implants to distinguish between root-form endosseous dental implants and blade-form endosseous dental implants. Root-form endosseous dental implants are characterized by four geometrically distinct types: Basket, screw, solid cylinder, and hollow cylinder. Blade-form endosseous dental implants are flat and have different surgical requirements. To ensure clarity, FDA is establishing a separate classification regulation for endosseous dental implant abutments (§ 872.3630 (21 CFR 872.3630)), because abutments are not implants. The guidance document entitled "Class II Special Controls Guidance Document: Root-Form Endosseous Dental Implants and Endosseous Dental Implant Abutments" will serve as the special control for both devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this guidance. Following the effective date of the final classification rule, any firm submitting a 510(k) premarket notification for these devices will need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

FDA believes that review of performance characteristics and labeling can ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Persons who intend to market these devices must submit to FDA a premarket notification submission before marketing the devices.

## IV. Analysis of Comments and FDA's Response

FDA received a total of five comments on the proposed rule and the special controls guidance document. Four comments addressed reclassification. Three comments agreed with the reclassification of root-form endosseous dental implants from class III to class II. One comment stated that root-form endosseous dental implants should remain in class III because of the potential for initial contamination of an implant at placement. The comment believes that initial contamination of the implant may be a cause of oral infection resulting in the future loss of the implant. FDA believes that the quality system regulation requirements, a general control, along with the recommended mitigation measures for health risks specified in the special controls guidance document, address sterility issues adequately and provide reasonable assurance of safety and effectiveness. Therefore, FDA is codifying the reclassification of root-form endosseous dental implants by revising § 872.3640.

Three comments supported the reclassification of endosseous dental

implant abutments into class II. FDA is codifying the reclassification of endosseous dental implant abutments in a separate classification regulation (§ 872.3630). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for both devices.

### V. Environmental Impact

FDA has determined under 21 CFR 25.34(b) that this reclassification action does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives. If regulation is necessary, a regulatory agency must plot a course that maximizes net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). FDA believes the final rule is consistent with the regulatory philosophy and principles identified in the Executive order. Additionally, as defined by the Executive order, the final rule does not constitute a significant regulatory action. As a result, the final rule is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II will relieve all manufacturers of the devices of the cost of eventually complying with the premarket approval requirements in section 515 of the act. FDA expects that manufacturers of cleared root-form endosseous dental implants and endosseous dental implant abutments will not have to take any additional action in response to this rule. Currently, manufacturers of endosseous dental implants and endosseous dental implant abutments must submit premarket notifications to FDA before marketing their devices. The guidance document reflects existing FDA practice in the review of these premarket notifications and will help expedite the review process for new manufacturers of these devices. Because reclassification will reduce the regulatory costs associated with these devices, it will impose no new burdens on manufacturers of these devices. In fact, it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate. As a result, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

### VII. Federalism

FDA has analyzed the final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies conferring substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, FDA has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order. As a result, a federalism summary impact statement is not required.

### VIII. Paperwork Reduction Act of 1995

FDA concludes that the final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget, according to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

### List of Subjects in 21 CFR Part 872

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

## PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 872.3630 is added to subpart D to read as follows:

**§ 872.3630 Endosseous dental implant abutment.**

(a) *Identification.* An endosseous dental implant abutment is a premanufactured prosthetic component directly connected to the endosseous dental implant and is intended for use as an aid in prosthetic rehabilitation.

(b) *Classification.* Class II (special controls). The guidance document entitled "Class II Special Controls Guidance Document: Root-Form Endosseous Dental Implants and Endosseous Dental Implant Abutments" will serve as the special control. (See § 872.1(e) for the availability of this guidance document.)

■ 3. Section 872.3640 is revised to read as follows:

**§ 872.3640 Endosseous dental implant.**

(a) *Identification.* An endosseous dental implant is a device made of a material such as titanium or titanium alloy, that is intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, in order to restore a patient's chewing function.

(b) *Classification.* (1) Class II (special controls). The device is classified as class II if it is a root-form endosseous dental implant. The root-form endosseous dental implant is characterized by four geometrically distinct types: Basket, screw, solid cylinder, and hollow cylinder. The guidance document entitled "Class II Special Controls Guidance Document: Root-Form Endosseous Dental Implants and Endosseous Dental Implant Abutments" will serve as the special control. (See § 872.1(e) for the availability of this guidance document.)

(2) Class III (premarket approval). The device is classified as class III if it is a blade-form endosseous dental implant.

Dated: May 3, 2004.

**Linda S. Kahan,**

*Center for Devices and Radiological Health.*

[FR Doc. 04–10748 Filed 5–11–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[TD 9124]

RIN 1545–BA69

### At-Risk Limitations; Interest Other Than That of a Creditor; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contain a correction to final regulations that were published in the **Federal Register** on

Monday, May 3, 2004 (69 FR 24078) relating to the treatment, for purposes of the at-risk limitations, of amounts borrowed from a person who has an interest in an activity other than that of a creditor or from a person (other than the borrower) with such an interest.

**DATES:** This correction is effective May 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Tara P. Volungis or Christopher L. Trump, (202) 622–3070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that is the subject of this correction is under section 465 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulation contains an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

■ Accordingly, the publication of the final regulations (TD 9124), that were the subject of FR Doc. 04–10010, is corrected as follows:

**§ 1.465–8 [Corrected]**

■ In § 1.465–8(b)(4), *Example 1.*, the language, "$30,000 payable to A. The three partners, B, C, and D, each assumes personal liability for". is corrected to read "$30,000 payable to A. Each of the three partners, B, C, and D, assumes personal liability for".

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).*

[FR Doc. 04–10789 Filed 5–11–04; 8:45 am]

**BILLING CODE 4830–01–P**

## POSTAL SERVICE

### 39 CFR Part 111

### Permissible Barcode Symbology for Parcels Eligible for the Barcode Discount

**AGENCY:** Postal Service.

**ACTION:** Withdrawal of final rule.

**SUMMARY:** We are withdrawing the amendment to the Domestic Mail Manual in the final rule published in the **Federal Register** on May 6, 2004 [69 FR 25321], that announced a new requirement for Package Services parcels.

**EFFECTIVE DATE:** May 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Obataiye B. Akinwole at (703) 292–3643.

**SUPPLEMENTARY INFORMATION:** The Postal Service will issue a further document regarding these mailing standards.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 04–10848 Filed 5–10–04; 12:33 pm]

**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–2004–0094; FRL–7358–2]**

### Pyraflufen-ethyl; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of pyraflufen-ethyl, (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate) and its acid metabolite, E-1 (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4- fluorophenoxyacetic acid), in or on wheat, forage; wheat, grain; wheat, hay; and wheat, straw. Nichino America Incorporated requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective May 12, 2004. Objections and requests for hearings must be received on or before July 12, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP–2004–0094. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers; dairy cattle farmers; livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

## II. Background and Statutory Findings

In the **Federal Register** of November 20, 2002 (67 FR 70073) (FRL–7184–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F6428) by Nichino America Incorporated, 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. That notice included a summary of the petition prepared by Nichino America Incorporated, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.585 be amended by establishing tolerances for combined residues of the herbicide pyraflufen-ethyl, (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) and its acid metabolite, E-1, (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methypyrazol-3-yl)-4-fluorophenoxyacetic acid), expressed as the ester equivalent, in or on wheat forage, wheat grain, wheat hay, and wheat straw at 0.01 parts per million (ppm).

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of pyraflufen-ethyl on wheat, forage and wheat, hay at 0.1 ppm; and wheat, grain and wheat, straw at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyraflufen-ethyl as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of April 30, 2003 (68 FR 23046) (FRL–7300–9).

### *B. Toxicological Endpoints*

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: "Traditional uncertainty factors;" the "special FQPA safety factor;" and the "default FQPA safety factor." By the term "traditional uncertainty factor," EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term "special FQPA safety factor" refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The "default FQPA safety factor" is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology ($Q^*$) is the primary method currently used by the Agency to quantify carcinogenic risk. The $Q^*$ approach assumes that any amount of exposure will lead to some degree of cancer risk. A $Q^*$ is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand ($1 \times 10^{-5}$), one in a million ($1 \times 10^{-6}$), or one in ten million ($1 \times 10^{-7}$). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure

($MOE_{cancer}$ = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for pyraflufen-ethyl used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 30, 2003 (68 FR 23046) (FRL–7300–9).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.585) for the combined residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1- methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate) and its acid metabolite, E-1 (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid), expressed as the ester equivalent, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from pyraflufen-ethyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure. No adverse effect attributable to a single exposure (dose) was observed in oral toxicity studies, including the developmental toxicity studies in rats and rabbits. Therefore, EPA did not identify an acute dietary endpoint and an acute dietary assessment was not performed.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100 percent crop treated (PCT) and tolerance-level residues for pyraflufen-ethyl on all treated crops. The exposure for pyraflufen-ethyl residues in food occupies less than 1% of the chronic percent adjusted dose (cPAD) for all population subgroups and is not a concern.

iii. *Cancer.* The cancer dietary exposure assessment was conducted using the DEEM analysis, which evaluated the individual food consumption as reported by respondents in the USDA nationwide CSFII 1994–1996 and 1998. The following assumptions were made for the cancer assessments: 100 PCT and tolerance-level residues for pyraflufen-ethyl on all treated crops. The exposure from pyraflufen-ethyl residues in food results in a cancer risk in the range of 1 in 1 million and is not a concern.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyraflufen-ethyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the chemical and physical characteristics of pyraflufen-ethyl.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to pyraflufen-ethyl they are further discussed in the aggregate risk sections in unit III.E.

Based on the FIRST and SCI-GROW models, the EECs of pyraflufen-ethyl for acute exposures are estimated to be 1.25 parts per billion (ppb) for surface water and 0.002 ppb for ground water. The EECs for chronic exposures are estimated to be 0.28 ppb for surface water and 0.002 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyraflufen-ethyl is currently registered for use on the following residential non-dietary sites: Airports, nurseries, ornamental turf, golf courses, roadsides, railroads, noncrop land, and uncultivated agricultural areas. The risk assessment was conducted using the following residential exposure assumptions: Adults and children may be exposed to residues of pyraflufen-ethyl through postapplication contact with treated areas which may include residential/recreational areas.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether pyraflufen-ethyl has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pyraflufen-ethyl and any other substances and pyraflufen-ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyraflufen-ethyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements

released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with pyraflufen-ethyl. There is no evidence of increased susceptibility of young rats in the reproduction study with pyraflufen-ethyl. EPA concluded there are no residual uncertainties for pre- and/or postnatal exposure.

3. *Conclusion.* There is a complete toxicity data base for pyraflufen-ethyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The field trial data on wheat, while some of which may be limited in geographic representation, indicate that residues of pyraflufen-ethyl are expected to be below the levels of quantitation. The likelihood of finite residues to occur in these crops is quite low. EPA determined that the 10X SF to protect infants and children should be removed and instead, a different additional safety factor of 1X should be used. The FQPA factor is removed because: There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with pyraflufen-ethyl; there is no evidence of increased susceptibility of young rats in the reproduction study with pyraflufen-ethyl; there are no residual uncertainties identified in the exposure databases; the dietary food exposure assessment is expected to be conservative, tolerance-level residues and 100 PCT information were used; and dietary drinking water exposure is based on conservative modeling estimates.

*E. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* No adverse effect attributable to a single exposure (dose) of pyraflufen-ethyl was observed in the oral toxicity studies, including the developmental toxicity studies in rats and rabbits. Therefore, an acute reference dose was not established and no acute risk is expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyraflufen-ethyl from food will utilize < 1% of the cPAD for the U.S. population and < 1% of the cPAD for children (1–6 years). Based on the use pattern, chronic residential exposure to residues of pyraflufen-ethyl is not expected. In addition, there is potential for chronic dietary exposure to pyraflufen-ethyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRAFLUFEN-ETHYL

| Population Subgroup[1] | cPAD mg/kg/day | % cPAD (Food) | Surface Water EEC[2] (ppb) | Ground Water EEC[2] (ppb) | Chronic DWLOC[3] (ppb) |
|---|---|---|---|---|---|
| U.S. population | 0.20 | < 1 | 0.28 | 0.002 | 7,000 |
| Males (20+ years) | 0.20 | < 1 | 0.28 | 0.002 | 7,000 |
| Males (13–19 years) | 0.20 | < 1 | 0.28 | 0.002 | 7,000 |

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRAFLUFEN-ETHYL—Continued

| Population Subgroup[1] | cPAD mg/kg/day | % cPAD (Food) | Surface Water EEC[2] (ppb) | Ground Water EEC[2] (ppb) | Chronic DWLOC[3] (ppb) |
|---|---|---|---|---|---|
| Females (13–50 years) | 0.20 | < 1 | 0.28 | 0.002 | 6,000 |
| Children (1–6 years) | 0.20 | < 1 | 0.28 | 0.002 | 2,000 |

[1] Subgroups with the highest food-source dietary exposure were selected for adult males, adult females, and children. The following body weights were used (70 kg adult male; 60 kg adult females; 10 kg child).
[2] The crop producing the highest level was used (potatoes, 0.009 lb ai/acre).
[3] Chronic DWLOC (ppb) = maximum chronic water exposure (mg/kg/day) × body weight (kg) ÷ water consumption (L) × $10^{-3}$ mg/μg.

3. *Short-term risk.* The short-term aggregate risk assessment estimates risks likely to result from 1 to 30 day exposure to pyraflufen-ethyl residues from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the short-term aggregate assessment, while average (chronic) values are used to account for dietary (food only) exposure. The short-term aggregate risk assessment is considered conservative because food-source dietary exposure is based on a Tier 1 DEEM assessment (tolerance level residues and 100 PCT information were used).

A short-term risk aggregate assessment was not performed for adults because no handler exposure is expected and postapplication inhalation exposure is expected to be negligible. A short-term aggregate risk assessment is required for infants and children because there is a potential for oral post-application exposure resulting from contact with treated areas which may include residential/recreational areas.

Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyraflufen-ethyl is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pyraflufen-ethyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 120,500 for children (3–5 years old). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of pyraflufen-ethyl in ground and surface water. After calculating DWLOCs and comparing them to- the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PYRAFLUFEN-ETHYL

| Population Subgroup | Aggregate MOE [1] (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC[2] (ppb) | Ground Water EEC[2] (ppb) | Short-Term DWLOC[3] (ppb) |
|---|---|---|---|---|---|
| Children (3–5 years) | 120,500 | 100 | 0.28 | 0.002 | 2,000 |

[1] Aggregate MOE = NOAEL ÷ (Avg food exposure + Residential exposure).
[2] The crop producing the highest level was used (potatoes, 0.009 lb ai/acre).
[3] DWLOC (ppb) = maximum water exposure (mg/kg/day) × body weight (kg) body weight: Children-10 kg ÷ water consumption (L) × $10^{-3}$ mg/μg.

4. *Intermediate-term risk.* The intermediate-term aggregate risk assessment estimates risks likely to result from 1 to 6 months of exposure to pyraflufen-ethyl residues from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the intermediate-term assessment, while average values are used for food and drinking water exposure.

An intermediate-term risk aggregate assessment is not required for adults because no handler exposure is expected and postapplication inhalation exposure is expected to be negligible. Also, an intermediate-term aggregate risk assessment is not required for infants and children because postapplication exposure over the intermediate-term duration is not likely based on the use pattern. Therefore, an intermediate-term aggregate risk assessment was not performed.

5. *Aggregate cancer risk for U.S. population.* Pyraflufen-ethyl has been classified as a "likely to be carcinogenic to humans" by the oral route of exposure ($Q_1$* of $3.32 \times 10^{-2}$ (mg/kg/day)$^{-1}$). Using the exposure assumptions discussed in this unit for cancer, the cancinogenic risk is determined for the U.S. population (total) only. The estimated exposure from food to pyraflufen-ethyl is $4.3 \times 10^{-5}$ mg/kg/day. Applying the $Q_1$* of 0.0332 (mg/kg/day)$^{-1}$ to the exposure value results in a cancer risk estimate in the range of 1 in 1 million. This assessment substantially overstates risk because it is based on the assumption that all commodities covered by pyraflufen-ethyl tolerances contain tolerance level residues of pyraflufen-ethyl. Potential exposure from pyraflufen-ethyl in drinking water will, at most, only marginally increase dietary exposure. As the table below indicates, the DWLOC, estimated using a cancer risk of 3 in 1 million (considered to be in the range of 1 in 1 million), is not exceeded by estimated levels of pyraflufen-ethyl in drinking water.

TABLE 3.—CANCER DRINKING WATER LEVELS OF COMPARISON CALCULATIONS FOR THE U.S. POPULATION

| $Q_1^*$ (mg/kg/day)$^{-1}$ | Negligible Risk Level[1] | Chronic Food Exposure mg/kg/day | Ground Water EEC[2] (ppb) | Surface Water EEC[2] (ppb) | Cancer DWLOC[3] (ppb) |
|---|---|---|---|---|---|
| 0.0332 | 3.0E–6 | 4.3E–5 | 0.002 | 0.28 | 1.65 |

[1] 3.0E–6 is statistically within the range that EPA generally accepts as "negligible risk."
[2] The crop producing the highest level was used (potatoes).
[3] Cancer DWLOC (ppb) = maximum water exposure (mg/kg/day) × body weight (kg) ÷ water consumption (L) × $10^{-3}$ mg/µg.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pyraflufen-ethyl residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Nichino America Incorporated has submitted a petition method validation (PMV) and an independent laboratory validation for a Gas Chromatography and Mass Selective (GC/MS) method proposed for the enforcement of tolerances for residues of pyraflufen-ethyl and its acid metabolite, E-1, on wheat.

### *B. International Residue Limits*

There is neither a Codex proposal, nor Canadian or Mexican limits, for residues of pyraflufen-ethyl in/on wheat. Harmonization is not an issue for this petition.

### *C. Conditions*

The following data are being required by the Agency to complete the database requirements prior to approval of an unconditional registration of pyraflufen-ethyl:

- Submit a separate copy of a detailed description of the methodology used to quantify residues of pyraflufen-ethyl and E–1 (measured as E–15, the methyl ester of E–1) for this tolerance request without confidentiality claims. The results for E–15 should be calculated in terms of parent compound. Once the separate detailed description of the methodology is received and accepted, it will be sent to the Food and Drug Administration (FDA) for inclusion in the Pesticide Analytical Manual Volume II (PAM II) as a lettered method.

## V. Conclusion

Therefore, the tolerances are established for combined residues of pyraflufen-ethyl, (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate) and its acid metabolite, E-1 (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4- fluorophenoxyacetic acid), expressed as the ester equivalent, in or on wheat, forage and wheat, hay at 0.1 ppm; wheat, grain and wheat, straw at 0.01 ppm.

## VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0094 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 12, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of

Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0094, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

## VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 29, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.585 is amended by alphabetically adding commodities in the table in paragraph (a) to read as follows:

**§ 180.585 Pyraflufen-ethyl; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * | * * |
| Wheat, forage | 0.1 |
| Wheat, grain | 0.01 |
| Wheat, hay | 0.1 |
| Wheat, straw | 0.01 |

* * * * *

[FR Doc. 04–10455 Filed 5–11–04; 8:45 am]
BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 04–1026; MB Docket No. 03–77; RM–10660, RM–10835]**

### Radio Broadcasting Services; Ashland, AL; Atlanta, GA; Coaling, Cordova, Decatur, Dora, Holly Pond, and Midfield, AL; Pulaski, TN; Sylacauga and Tuscaloosa, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a petition for rule making in this proceeding filed by Cox Radio, Inc. and CXR Holdings, Inc. and a counterproposal jointly filed by Kea Radio, Inc. and Pulaski Broadcasting, Inc. this document grants multiple channel substitutions and changes of community of license in Alabama, Georgia and Tennessee. *See* 68 FR 17592, April 10, 2003. Specifically, this document substitutes Channel 239C2 for Channel 239C1 at Tuscaloosa, Alabama, reallots Channel 239C2 to Midfield, Alabama, and modifies the Station WBHJ license to specify operation on Channel 239C2 at Midfield. In order to accommodate the Channel 239C2 allotment at Midfield, this document reallots Channel 238A from Holly Pond, Alabama, Hackleburg, Alabama, and modifies the Station WFMH–FM license to specify Hackleburg as the community of license. To replace the loss of the sole local service at Holly Pond, this document reallots Channel 245C from Decatur, Alabama, to Holly Pond, and modifies the license of Station WRSA to specify Holly Pond as the community of license. In order to accommodate Channel 239C2 at Midfield, it reallots Channel 237A from Cordova, Alabama, Coaling, Alabama, and modifies the Station WFFN license to specify Coaling as the community of license. To replace the loss of the sole local service at Cordova, this document also reallots Channel 223A from Dora, Alabama, to Cordova, and modifies the Station WQOP–FM license to specify Cordova as the community of license. *See* Supplementary Information.

**DATES:** Effective June 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau (202) 418–2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Report and Order* in MM Docket No.03–77 adopted April 14, 2004, and released April 19, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com*.

This document reallots Channel 238A from Ashland, Alabama, to Hobson City, Alabama, and modifies the Station WASZ license to specify Hobson City as its community of license. To replace the loss of the sole local service at Ashland, this documents reallots Channel 252A from Sylacauga, Alabama, to Ashland, and modifies the Station WTRB–FM license to specify Ashland as its community of license. This document also reclassifies the Channel 253C allotment at Atlanta, Georgia, to Channel 253C0 and modifies the Station WSB–FM license to specify operation on Channel 253C0. This document substitutes Channel 252C3 for Channel 252A at Scottsboro, Alabama, and modifies the Station WKEA license to specify operation Channel 252C3. In order to accommodate the Channel 252C3 allotment at Scottsboro, this document substitutes Channel 252C3 for Channel 252A at Pulaski, Tennessee, reallots Channel 252C3 to Killen, Alabama, and modifies the Station WKSR–FM license to specify operation on Channel 252C3 at Killen. The reference coordinates for the Channel 239C2 allotment at Midfield, Alabama, are 33–24–50 and 87–01–05. The reference coordinates for the Channel 238A allotment at Hackleburg, Alabama, are 34–13–15 and 87–45–00. The reference coordinates for the Channel 245C allotment at Holly Pond, Alabama, are 34–29–23 and 86–37–38. The reference coordinates for the Channel 237A allotment at Coaling, Alabama, are 33–04–58 and 87–27–02. The reference coordinates for the Channel 223A allotment at Cordova, Alabama, are 33–38–55 and 87–09–19. The reference coordinates for the Channel 238A allotment at Hobson City, Alabama, are 33–29–30 and 85–52–55. The reference coordinates for the Channel 252A allotment at Ashland, Alabama, are 33–13–30 and 85–53–40. The reference coordinates for the Channel 253Co allotment at Atlanta, Georgia, are 33–45–33 and 84–20–05. The reference coordinates for the Channel 252C3 allotment at Scottsboro, Alabama, are 34–30–40 and 86–01–54. The reference coordinates for the Channel 252C3 allotment at Killen, Alabama, are 34–58–40 and 87–36–05.

**List of Subjects in 47 CFR Part 73**

Radio, Radio Broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 238A and by adding Channel 252A at Ashland, by adding Coaling, Channel 237A, by removing Channel 237A and by adding Channel 223A at Cordova, by removing Channel 245C at Decatur, by removing Dora, Channel 223A, by adding Hackleburg, Channel 238A, by adding Hobson City, Channel 238A, by adding Holly Pond, Channel 245C, by adding Killen, Channel 252C3, by adding Midfield, Channel 239C2, by removing Channel 252A and by adding Channel 252C3 at Scottsboro, by removing Sylacauga, Channel 252A, and by removing Tuscaloosa, Channel 239C1.

■ 3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 253C and by adding Channel 253C0 at Atlanta.

■ 4. Section 73.202(b), the Table of FM Allotments under Tennessee, is

amended by removing Pulaski, Channel 252A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04–10683 Filed 5–11–04; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 031218322–4137–02; I.D. 111903A]**

**RIN 0648–AR73**

## Fisheries of the Exclusive Economic Zone Off Alaska; Skates Management in the Groundfish Fisheries of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 63 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 63 moves skates from the "other species" list to the "target species" list in the FMP. By listing skates as a target species, management of a directed fishery for skates in the Gulf of Alaska (GOA) is improved. The final rule revises the definition of "other species" and revises the listings for skates and "other species" to allow for the management of incidental catch of skates in groundfish fisheries and for groundfish in the skates directed fishery. This action is necessary to reduce the potential for overfishing skates. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** Effective June 11, 2004.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action, as well as the Other Species Considerations for the Gulf of Alaska in the November 1999 GOA Stock Assessment and Fishery Evaluation (SAFE) report may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the Exclusive Economic Zone of the GOA are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

### Background

The Council adopted Amendment 63 in October 2003, to prevent overfishing of skate species. Amendment 63 moves skates from the "other species" list to the "target species" list in the FMP. The Notice of Availability for Amendment 63 was published in the **Federal Register** for a 60–day public review and comment period that ended February 2, 2004 (68 FR 67390, December 2, 2003). The proposed rule for this action was published in the **Federal Register** on January 6, 2004 (69 FR 614). The comment period for the proposed rule ended February 20, 2004. The Secretary of Commerce approved the FMP amendment on February 27, 2004.

In December 2003, the Council recommended proposed harvest specifications for skates in the GOA. These harvest specifications were published in the **Federal Register** on March 4, 2004 (69 FR 10190), with a 15-day comment period ending March 19, 2004. Harvest specifications establishing overfishing levels (OFLs), acceptable biological catch (ABC), and total allowable catch (TAC) amounts for skates will allow management of the directed fishery for skates, reducing the potential for overfishing of skate species and meeting the conservation objectives of the Magnuson-Stevens Act.

This final rule will facilitate incidental catch management by clarifying the maximum retainable amounts (MRAs) of groundfish in the skate directed fishery and the MRAs for skates in other groundfish directed fisheries. This action revises Table 10 of 50 CFR part 679 to separate skates from the "other species" complex and to establish a separate listing of MRAs for skates. The listing of species groups under footnote 7 to Table 10 for the "other species" complex is revised to remove skates from the listing. Footnote 11 to Table 10 is added to the MRAs column and row for skates to identify the managed skate species and the reporting codes. These changes are necessary to clarify the retention limits of skates incidentally caught in other groundfish directed fisheries and the retention limits of other groundfish taken incidentally in the directed fishery for skates. No changes are made to the MRA that apply to skates or to other groundfish from the MRAs that apply to the "other species" complex.

The definition of "other species" in the regulations is revised to reference 50 CFR 679.20(e) for Tables 10 and 11 instead of 50 CFR 679.20(c), which does not apply to Tables 10 and 11.

### Comments and Responses

Two letters of comment were received regarding Amendment 63. The letters contained seven separate comments which are summarized and responded to below.

*Comment 1.* Reduce the TAC by 50 percent this year and an additional 10 percent each year, thereafter.

*Response.* NMFS assumes this is a recommendation to set TAC at 50 percent of the ABC level. Amendment 63 does not set annual TACs for skates, rather it removes skates from the "other species" complex in the GOA and authorizes the Council to recommend OFLs, ABCs, TACs, and other management measures for skates as part of the annual harvest specifications process for groundfish in the GOA. In a separate action, NMFS has published proposed 2004 harvest specifications and associated management measures for skates in the GOA (69 FR 10190, March 4, 2004) based on Council recommendations made in December 2003. The Council recommended and NMFS proposed that the combined TACs for all skates in the GOA in 2004 be a total of 6,993 metric tons (mt) (86 percent of the combined ABC amounts). Comments on these proposed specifications were invited through March 19, 2004.

TAC amounts in the GOA are established at or below the ABC amounts for groundfish species with reductions from the ABC dependent on socioeconomic and ecosystem concerns. The ABCs are developed by the Groundfish Plan Team based on conservative estimates of biomass, depending on the amount of information available for a species. The ABCs are reviewed by the Council's Scientific and Statistical Committee (SSC) and TACs are recommended by the Council's Advisory Panel (AP) and the Council. No socioeconomic or ecosystem concerns have been brought forward indicating the need for a reduction in TAC of 50 percent in 2004, and 10 percent each year, thereafter. For

further discussion of the harvest specifications for skates, see the response to Comment 5 below.

*Comment 2.* Establish an extensive system of no take marine reserves to prevent overfishing, which is detrimental to the American public.

*Response.* The creation of marine reserves is outside the scope of Amendment 63. The concept of establishing marine reserves is explored in the draft environmental impact statement (EIS) for essential fish habitat (EFH) dated January, 2004. Further information on the draft EIS may be found at the NMFS Alaska Region website at *www.fakr.noaa.gov*. Comments on the draft EIS were accepted through April 15, 2004 (69 FR 2593, January 16, 2004). In April 2004, the Council received a report from its Groundfish Plan Teams regarding 23 proposals for designating Habitat Areas of Particular Concern. Several of these proposals recommended the creation of no-take marine reserves around such uncommon features as high relief coral gardens and sea mounts. NMFS also reopened the comment period for national EFH Guidelines through April 26, 2004 (69 FR 86156, February 25, 2004). Preventing overfishing of skates is best accomplished by establishing separate harvest management for skates. Information supporting the creation of marine reserves for the protection of skates is not available at this time.

*Comment 3.* Environmental interests should be better represented in the regional fishery management councils.

*Response.* Amendment 63 does not address membership of the regional fishery management councils. The regional fishery management councils were established by the Magnuson-Stevens Act, which specifies the qualifications of members and the procedures for appointing members to the councils. The number of voting members varies (7–19) by region. The majority of voting members in each region are appointed by the Secretary of Commerce from a list of nominees submitted by the governor of each constituent state. Changing the voting membership of a regional fishery management council should be done through petition to the applicable constituent state governor.

*Comment 4.* Adoption of Amendment 63 is strongly supported to enable NMFS to prevent the overfishing of skates in the GOA through more species-specific and area-specific management. Based on the sensitive life history of skates (big skates, *Raja binoculata*, and longnose skates, *Raja rhina*, in particular) which includes slow growth, late maturity, long life, and low fecundity, we urge application of the precautionary approach in all aspects of managing these vulnerable species.

*Response.* Amendment 63 separates skates from the "other species" complex in the GOA and authorizes the Council to set OFL, ABC, and TAC levels, as well as other management measures, including species-specific and area-specific management as part of the annual groundfish harvest specification process. A precautionary approach is used in developing the OFL and ABC amounts and in establishing how to manage the harvest of the TAC amounts for skates in the Western, Central, and Eastern GOA. The level of precaution of harvest management is dependent on the amount of information available and the potential impacts on other groundfish fisheries, as further explained in the response to comment 5.

*Comment 5.* We urge NMFS to adopt the following management measures. (A) Prohibit directed fishing for, and retention of, big and longnose skates. At the very least, quotas for these species should be significantly reduced. (B) Immediately pursue management measures to reduce incidental catch of big and longnose skates. (C) Adopt the general framework of Option 3 in the EA prepared for this action (see **ADDRESSES**). (D) Do not increase the gulf-wide total ABC for skates given that management of skates should lead to reduced landings. (E) The proposed ABCs and OFLs would allow more skates to be caught in 2004 than all "other species," including skates, in previous years and should be reduced. (F) Cap skate harvest at or below recent levels (2003) until more robust estimates of skate stock conditions and ABC levels can be made.

*Response.* All of the remarks in comment 5 are germane to the management measures NMFS proposed for the 2004 skate fisheries in the GOA.

(A) Each option for the management of skates analyzed in the EA prepared for this action contained two suboptions: set TACs at the ABC levels or lower levels sufficient to meet anticipated incidental catch needs in other directed fisheries during the fishing year, or set TACs at ABC levels. The first suboption would have the effect of prohibiting directed fishing for skates throughout the year. The second suboption would allow NMFS to establish a directed fishing allowance for skates after deducting anticipated incidental catch needs. In either case, retention of skates would be prohibited once the TACs are reached. The Council's recommended TACs would allow for a modest directed fishery of about 1,000 mt in each of two specified skate fisheries. When this directed fishing allowance is reached, skates would be placed on bycatch status, and directed fishing would be prohibited. For 2004, the Council recommended, and NMFS proposed (69 FR 10190, March 19, 2004) to set TACs for skates (totaling 6,996 mt) at or below the ABCs (totaling 8,144 mt) which are substantially below the 2003 TAC for "other species" (11,260 mt) in the GOA.

(B) The reduction of incidental catch is a goal of NMFS. By breaking skates out of the "other species" category in Table 10 of 50 CFR part 679, the MRAs will be specific to skate species, allowing for better monitoring and enforcement of incidental catch of skates in the directed fisheries for groundfish and of groundfish in the directed fishery for skates. NMFS will continue to work with the Council and the fishing industry to develop ways, including management measures and fishing practices, to reduce bycatch for all groundfish species.

(C) The GOA Groundfish Plan Team, the SSC, the AP, and the Council analyzed and considered Option 3 in the EA prepared for this action. Option 3 would create separate OFLs, ABCs, and TACs for three skate targets (big skates, longnose skates, and other skates) in the Eastern, Central, and Western management areas of the GOA. Of all the options considered, Option 3 would provide the most protection for skates in the GOA. In the GOA, one species is managed in this manner, Pacific ocean perch (POP). The rationale for the management of POP in this instance is that they are long lived, slow to mature, and could possibly be subject to localized depletion. This rationale also applies to skates. Option 3 is a viable method for management if enough information is available, and should continue to be considered in the future during the harvest specifications process.

Based on the lack of information available, the SSC recommended a single gulf-wide OFL for skates in 2004, and a single ABC for skates gulf-wide, except for big and longnose skates in the Central GOA. The SSC believes that big and longnose skates in the Central GOA require additional protection because the 2003 directed fishery for skates preferentially targeted these two species and fishing effort was concentrated in the Central GOA. The Council and its committees also wished to avoid a situation where finely divided target fisheries often have small regional quotas which, if unexpectedly reached, could have detrimental impacts on other more fully developed fisheries. The Plan

Team recognized that most of the skates landed in the Central GOA were big skates and recommended a TAC for big and longnose skates in the Central GOA at the OFL for big skates (3,284 mt), which is below the ABC (4,435 mt) for big and longnose skates combined. The AP and Council concurred with the Plan Team's and SSC's recommendation, and it was incorporated into the proposed 2004 GOA skate harvest specifications published March 19, 2004 (69 FR 10190). The big and longnose skate fisheries will be managed to prevent the combined TAC level from being exceeded. This should prevent the big skates' OFL from being exceeded.

(D) The ABC for skates gulf-wide is not being increased. Rather this is the first time an ABC for skates in the GOA is being established. The proposed skates' gulf-wide ABCs (8,144 mt) and TACs (6,993 mt) are substantially lower than the 2003 TAC for "other species" in the GOA (11,260 mt). The conservative directed fishing allowances (DFA) resulting from the TACs will lead to lower harvests of skates in 2004 than in 2003.

(E) While the 2004 TAC for big and longnose skates in the Central GOA is higher than the actual 2003 catch, this does not mean that catches will increase. The commenter does not take into account that NMFS now will be able to set a DFA for skates that is far lower than what would have been possible if skates were managed as part of the "other species" assemblage. Catches of skates in the GOA in 2004 likely will be lower than 2003 because NMFS now will be able to limit the amount harvested in directed skate fisheries at a much lower level than when skates where managed together with "other species."

(F) For the reasons discussed above, skate landings in the GOA in 2004 are expected to be lower than 2003 levels.

*Comment 6.* Reduce the TAC for the "other species" complex by 45 percent, once skates are removed from this complex.

*Response.* NMFS recognizes that with the removal of skates from the "other species" complex, the TAC for the "other species" complex will increase. The TAC for the "other species" complex is required by the FMP to be 5 percent of the combined TACs for groundfish species in the GOA. The skates TACs will now be added into the combined TACs, resulting in a larger TAC for the "other species" complex. Any changes to how the TAC is established for the "other species" complex would require an additional FMP amendment.

The Council has started work through its Target/Nontarget Committee and ad hoc group on how species should be identified, grouped, and managed based on available information. The committee is exploring factors necessary to support a directed fishery for a species, including preparation of stock assessments before a directed fishery is allowed to develop. Preparation of stock assessments for the remaining species in the "other species" complex (sharks, sculpins, octopi, and squid) likely would result in ABC recommendations totaling approximately 6,500 mt based on the most recent stock assessment (Other Species Considerations for the Gulf of Alaska in the November 1999 GOA SAFE report, see **ADDRESSES**). This would be a reduction of approximately 50 percent from the proposed 2004 "other species" complex TAC of 12,942 mt.

*Comment 7.* NMFS should consider skates and sharks as priority species in terms of research, assessment, and outreach projects.

*Response.* This comment is outside the scope of Amendment 63 and the proposed 2004 GOA harvest specifications. However, sharks and skates are priority species for improved assessments. In this regard, NMFS has recently: (1) Prepared skate identification manuals for use by observers, (2) trained at sea and shoreside observers in the catch and landing composition of skates in the groundfish fisheries, (3) sampled shoreside deliveries of skates for catch composition with respect to species, sex, and size, (4) collected age information to help determine the age structure of skate stocks, (5) amended recordkeeping and reporting requirements to record landings and discards of sharks and skates at the species or genus level, facilitating the inseason monitoring of the skates' TACs, and (6) encouraged fishermen, when discarding skates, to employ careful release methods like those required for halibut to reduce bycatch mortality.

No changes were made from the proposed rule in the final rule.

## Classification

The Regional Administrator determined that Amendment 63 is necessary for the conservation and management of the GOA groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared a FRFA which incorporates the IRFA and a summary of the analyses completed to support the action. A copy of these analyses is available from NMFS (see **ADDRESSES**). The FRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the action. The following summarizes the FRFA.

*Need for and Objectives of This Action*

The need and objectives for this action are described above in the preamble to this final rule.

*Issues Raised by Public Comments on the IRFA*

The proposed rule was published in the **Federal Register** on January 6, 2004 (69 FR 614). An IRFA was prepared for the proposed rule, and described in the Classification section of the preamble to that rule. The public comment period ended on February 20, 2004. No public comments were received in response to the IRFA or on the economic impacts of the rule.

*Number and Description of Small Entities Affected by the Rule*

The entities directly regulated by this action would be the fishing operations harvesting species in the "other species" complex in the GOA, using hook-and-line gear or trawls. These vessels may be targeting skates (the only species in the "other species" category currently fished as a target), or they may be harvesting skates and other species in the "other species" category incidentally to other targeted fishing operations; (e.g., fishing for Pacific cod or shallow water flatfish). Because any hook-and-line or trawl operation in the GOA may harvest the "other species" complex, the universe of potentially affected operations includes all GOA hook-and-line and trawl vessels.

In 2001, the universe of potentially affected vessels included 670 hook-and-line vessels and 138 trawlers. Of these, 650 were small hook-and-line catcher vessels, 15 were small hook-and-line catcher/processors, 120 were small trawl catcher vessels, and 4 were small trawl catcher/processors. The remaining 19 vessels are large vessels. This size determination is based on operation revenues from groundfish fishing in Alaska. Moreover, the data are not available to take account of affiliations between fishing operations and associated processors, or other associated fishing operations. For these reasons, these counts may overstate the numbers of small entities potentially directly regulated by the action. Average Alaska groundfish revenues, in 2001, for these small entities were $100,000 for

hook-and-line catcher vessels, $1.82 million for hook-and-line catcher/processors, $370,000 for trawl catcher vessels, and $1.80 million for trawl catcher/processors.

The directed skates fishery that emerged in 2003 is described in Section 1.0 of the EA (see **ADDRESSES**). Seventy-seven hook-and-line catcher vessels, 53 trawl catcher vessels, 13 hook-and-line catcher/processors, and 10 trawl catcher/processors took part in the fishery in 2003, producing an estimated ex-vessel gross revenue of about $1.7 million. This suggests average revenues for these vessels were about $11,000.

*Alternatives to the Proposed Action*

The Council considered the alternative of taking no action. This would have left skates in the "other species" category. The "other species" category includes additional species such as sculpin, shark, squid, and octopus. The "other species" TAC is set equal to 5 percent of the combined TACs for all target species in the GOA. In 2004, the "other species" TAC is 12,592 mt. This amount far exceeded the biologically desirable skate harvest in 2004. The 2004 OFL for all skate species together was projected to be 10,859 mt. The "other species" TAC also is higher than the OFLs would have been for individual species or species groups. Nevertheless, fishermen would have been able to harvest skates, or any of the individual skate species or species groups up to the "other species" TAC. This alternative was rejected because of the need for improved management controls to protect skate species, in light of the serious concerns about the health of the skate resource under a continuing directed fishery without sufficient management controls.

*Recordkeeping and Reporting Requirements*

Nothing in the action would result in changes in reporting or recordkeeping requirements.

**Small Entity Compliance Guide**

This action revises 50 CFR part 679, Table 10, which is used to determine the MRAs for skates in the directed fisheries for other groundfish and for other groundfish in the directed fishery for skates. This action does not require any additional compliance from small entities. This action gives effect to separate inseason actions which may be taken to limit the harvest of skates. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following Web site: *http://www.fakr.noaa.gov.*

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 5, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; and Pub L. 106–554, Sec. 209.

■ 2. In § 679.2, the definition "Other species" is revised to read as follows:

**§ 679.2 Definitions.**

* * * * *

*Other species* is a category that consists of groundfish species in each management area that are not specified as target species (see Tables 10 and 11 to this part pursuant to § 679.20(e)).

* * * * *

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■ 3. Table 10 to part 679 is revised to read as follows:

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

| BASIS SPECIES | | INCIDENTAL CATCH SPECIES | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Code | Species | Pollock | Pacific cod | DW flat [2] | Rex sole | Flathead sole | SW flat [3] | Arrowtooth | Sablefish | Aggregated rockfish [8] | SR/RE ERA [1] | DSR SEO [6] | Atka mackerel | Aggregated forage fish [10] | Skates [11] | Other species [7] |
| 110 | Pacific cod | 20 | na[9] | 20 | 20 | 20 | 20 | 35 | 1 | 5 | [1] | 10 | 20 | 2 | 20 | 20 |
| 121 | Arrowtooth | 5 | 5 | 0 | 0 | 0 | 0 | na[9] | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 |
| 122 | Flathead sole | 20 | 20 | 20 | 20 | na[9] | 20 | 35 | 7 | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| 125 | Rex sole | 20 | 20 | 20 | na[9] | 20 | 20 | 35 | 7 | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| 136 | Northern rockfish | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 7 | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| 141 | Pacific ocean perch | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 7 | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| 143 | Thornyhead | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 7 | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| 152/ 151 | Shortraker/ rougheye [1] | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 7 | 15 | na[9] | 1 | 20 | 2 | 20 | 20 |
| 193 | Atka mackerel | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 1 | 5 | [1] | 10 | na[9] | 2 | 20 | 20 |
| 270 | Pollock | na[9] | 20 | 20 | 20 | 20 | 20 | 35 | 1 | 5 | [1] | 10 | 20 | 2 | 20 | 20 |
| 710 | Sablefish | 20 | 20 | 20 | 20 | 20 | 20 | 35 | | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| Flatfish, deep water [2] | | 20 | 20 | na[9] | 20 | 20 | 20 | 35 | 7 | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| Flatfish, shallow water [3] | | 20 | 20 | 20 | 20 | 20 | na[9] | 35 | 1 | 5 | [1] | 10 | 20 | 2 | 20 | 20 |
| Rockfish, other [4] | | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 7 | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| Rockfish, pelagic [5] | | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 7 | 15 | 7 | 1 | 20 | 2 | 20 | 20 |
| Rockfish, DSR-SEO [6] | | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 7 | 15 | 7 | na[9] | 20 | 2 | 20 | 20 |
| Skates [11] | | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 1 | 5 | [1] | 10 | 20 | 2 | na[9] | 20 |
| Other species [7] | | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 1 | 5 | [1] | 10 | 20 | 2 | 20 | na[9] |
| Aggregated amount of non-groundfish species | | 20 | 20 | 20 | 20 | 20 | 20 | 35 | 1 | 5 | [1] | 10 | 20 | 2 | 20 | 20 |

Notes to Table 10 to Part 679

| | | | | | | |
|---|---|---|---|---|---|---|
| 1 | Shortraker/rougheye rockfish | | | | | |
| | | SR/RE | shortraker/rougheye rockfish (171) | | | |
| | | | shortraker rockfish (152) | | | |
| | | | rougheye rockfish (151) | | | |
| | | SR/RE ERA | shortraker/rougheye rockfish in the Eastern Regulatory Area. | | | |
| | Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish | | | | | |
| 2 | Deep-water flatfish | Dover sole, Greenland turbot, and deep-sea sole | | | | |
| 3 | Shallow water flatfish | Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder | | | | |
| 4 | Other rockfish | Western Regulatory Area | means slope rockfish and demersal shelf rockfish | | | |
| | | Central Regulatory Area | | | | |
| | | West Yakutat District | | | | |
| | | Southeast Outside District | means slope rockfish | | | |
| | | Slope rockfish | | | | |
| | | *S. aurora* (aurora) | *S. variegatus* (harlequin) | *S. brevispinis* (silvergrey) | | |
| | | *S. melanostomus* (blackgill) | *S. wilsoni* (pygmy) | *S. diploproa* (splitnose) | | |
| | | *S. paucispinis* (bocaccio) | *S. babcocki* (redbanded) | *S. saxicola* (stripetail) | | |
| | | *S. goodei* (chilipepper) | *S. proriger* (redstripe) | *S. miniatus* (vermilion) | | |
| | | *S. crameri* (darkblotch) | *S. zacentrus* (sharpchin) | *S. reedi* (yellowmouth) | | |
| | | *S. elongatus* (greenstriped) | *S. jordani* (shortbelly) | | | |
| | | In the Eastern GOA only, Slope rockfish also includes *S. polyspinous*. (Northern) | | | | |
| 5 | Pelagic shelf rockfish | *S. ciliatus* (dusky) | *S. entomelas* (widow) | *S. flavidus* (yellowtail) | | |
| 6 | Demersal shelf rockfish (DSR) | *S. pinniger* (canary) | *S. maliger* (quillback) | *S. ruberrimus* (yelloweye) | | |
| | | *S. nebulosus* (china) | *S. helvomaculatus* (rosethorn) | | | |
| | | *S. caurinus* (copper) | *S. nigrocinctus* (tiger) | | | |
| | | DSR-SEO = Demersal shelf rockfish in the Southeast Outside District | | | | |
| 7 | Other species | sculpins | octopus | sharks | squid | |

| | | | |
|---|---|---|---|
| 8 | Aggregated rockfish | means rockfish of the genera *Sebastes* and *Sebastolobus* defined at § 679.2 except in: | |
| | | Southeast Outside District (SEO) | where DSR is a separate category for those species marked with a numerical percentage |
| | | Eastern Regulatory Area (ERA) | where SR/RE is a separate category for those species marked with a numerical percentage |
| 9 | N/A | not applicable | |
| 10 | Aggregated forage fish (all species of the following families) | | |
| | Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*) | | 209 |
| | Capelin smelt (family *Osmeridae*) | | 516 |
| | Deep-sea smelts (family *Bathylagidae*) | | 773 |
| | Eulachon smelt (family *Osmeridae*) | | 511 |
| | Gunnels (family *Pholidae*) | | 207 |
| | Krill (order *Euphausiacea*) | | 800 |
| | Laternfishes (family *Myctophidae*) | | 772 |
| | Pacific herring (family *Clupeidae*) | | 235 |
| | Pacific Sand fish (family *Trichodontidae*) | | 206 |
| | Pacific Sand lance (family *Ammodytidae*) | | 774 |
| | Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family *Stichaeidae*) | | 208 |
| | Surf smelt (family *Osmeridae*) | | 515 |
| 11 | Skates Species and Groups | | |
| | Big Skates (702) | | |
| | Longnose Skates (701) | | |
| | Other Skates (700) | | |

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040223064–4136–02; I.D. 020404F]

## Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2004 Harvest Specifications for Skates

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final 2004 harvest specifications for skates and associated management measures; closures.

**SUMMARY:** NMFS announces final 2004 harvest specifications for skates and associated management measures for the skate fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for skates during the 2004 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the GOA (FMP). The intended effect of this action is to conserve and manage the skate resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective at 1200 hrs, Alaska local time (A.l.t.), June 11, 2004, through 2400 hrs, A.l.t, December 31, 2004.

**ADDRESSES:** Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action and the Final 2003 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2003, are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

**FOR FURTHER INFORMATION CONTACT:** Tom Pearson, 907–481–1780 or e-mail at *tom.pearson@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background for the Final 2004 Skate Harvest Specifications

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

In October 2003, the Council made final recommendations on Amendment 63 to the FMP and submitted it for review by the Secretary of Commerce (Secretary) in November 2003. The Council proposed Amendment 63 to move skates from the "other species" category to the target species category in the FMP. By establishing skates as a target species, a directed fishery for skates in the GOA could be managed to reduce the potential of overfishing skates while providing an opportunity for achieving a long term sustainable yield from the skate resource in the GOA. NMFS published a Notice of Availability for Amendment 63 on December 2, 2003 (68 FR 67390) and a proposed rule to implement Amendment 63 on January 6, 2004 (69 FR 614). The Secretary approved Amendment 63 on February 27, 2004.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (see § 679.20(a)(1)(ii)). Regulations at § 679.20(c)(3)(i) further require NMFS to publish annually the final annual TAC. NMFS published the final 2004 groundfish harvest specifications in the **Federal Register** on February 27, 2004 (69 FR 9261). The final 2004 harvest specifications for skates in the GOA and associated management measures contained in this action amend the final 2004 groundfish harvest specifications.

The proposed harvest specifications for skates in the GOA were published in the **Federal Register** on March 4, 2004 (69 FR 10190). Comments were invited and accepted through March 19, 2004. NMFS received one letter of comment on the proposed specifications. This letter of comment is summarized and responded to in this document under the heading Response to Comments. Public consultation with the Council occurred during its December 2003 meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, the Council recommended, and NMFS approved, the final 2004 harvest specifications for skates set forth in Table 1 of this action. No changes were made from the proposed to the final harvest specifications for skates. For 2004, the sum of skate TAC amounts is 6,993 mt.

### Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC and TAC levels for each species group are based on the best available biological and socioeconomic information, including methods used to calculate stock biomass, assumed distribution of stock biomass, and estimated incidental catch in other directed groundfish fisheries. In December 2003, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological and harvest information about the condition of groundfish stocks in the GOA. Most of this information was compiled initially by the Council's GOA Plan Team and is presented in the final 2003 SAFE report for the GOA groundfish fisheries, dated November 2003. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category.

The Plan Team recommended a single gulfwide overfishing level (OFL) for all skate species, a single gulfwide ABC for "other skates" (Genus *Bathyraja*), and ABCs for Big and Longnose skates (*Raja binoculata* and *Raja rhina*, respectively) combined in the Western, Central, and Eastern Regulatory Areas of the GOA. Additionally, the Plan Team recommended that the TAC for Big and Longnose skates in the Central Regulatory Area not exceed the calculated OFL for Big skates in that area (3,284 mt). The SSC concurred with the Plan Team's recommendation for a single gulfwide OFL for all skate species but recommended a separate ABC for Big and Longnose skates only in the Central Regulatory Area. The SSC believes that this breakout would be a better method to address the immediate management concerns in the Central Regulatory Area given the current data limitations, which include a lack of skate species composition data in the retained and discarded catch in previous years. The AP and Council concurred with the SSC's ABC recommendations which are presented in Table 1. The AP and the Council concurred with the Plan Team's TAC recommendation of 3,284 mt for Big and Longnose skates combined in the Central Regulatory Area. The AP and

Council recommended that the TAC for all skates, excluding Big and Longnose skates in the Central Regulatory Area, be set at the ABC level of 3,709 mt. These amounts are presented in Table 1.

TABLE 1.—FINAL 2004 ABCS, TACS, AND OFL FOR SKATES IN THE WESTERN (W), CENTRAL (C), EASTERN (E), AND GULFWIDE (GW) AREAS OF THE GULF OF ALASKA. (VALUES ARE IN METRIC TONS)

| Species/Area | ABC | TAC | Overfishing |
|---|---|---|---|
| Big and Longnose skate[1]/W and E and "Other" skates[2]/GW | 3,709 | 3,709 | |
| Big and Longnose skate/C | 4,435 | 3,284 | |
| Total/GW | 8,144 | 6,993 | 10,859 |

[1] Big skate means *Raja binoculata* and Longnose skate means *Raja rhina*.
[2] "Other" skates means *Bathyraja* spp.

With respect to the final 2004 harvest specifications for the groundfish fishery of the GOA, published on February 27, 2004 (69 FR 9261), this action would: (1) raise the gulfwide total OFL levels by 10,859 mt, from 649,460 mt to 660,319 mt, (2) raise the gulfwide total ABC levels by 8,144 mt, from 498,948 mt to 507,092 mt, (3) raise the "other species" TAC by 350 mt (5 percent of 6,993 mt), from 12,592 mt to 12,942 mt, (4) raise the gulfwide total TAC levels by 7,343 mt (6,993 mt + 350 mt), from 264,433 mt to 271,776 mt, which is within the required OY range of 116,000 mt to 800,000 mt, and (5) raise the non-exempt AFA catcher vessel "other species" sideboard limitation gulfwide total by 3 mt, from 113 mt to 116 mt.

**Additional Management Measures**

NMFS is adopting 4 management measures for skates that currently apply to "other species." First, NMFS published a proposed rule implementing Amendment 63 to the FMP on January 6, 2004 (69 FR 614) which proposed to establish the maximum retainable amount of incidental catch for skates equal to that for "other species" (Table 10 to part 679—Gulf of Alaska Retainable Percentages). These management measures will be implemented by the final rule for Amendment 63, which will be published separately in the **Federal Register** in the near future. The other management measures were published in the proposed specifications for skates on March 4, 2004 (69 FR 10190).

Second, halibut bycatch mortality in the directed trawl fishery targeting skates will accrue to PSC limits established for the shallow-water complex, and bycatch mortality in the directed hook-and-line fishery targeting skates will accrue to the limits established for hook-and-line gear other than demersal shelf rockfish.

Third, the halibut discard mortality rates will be based on those for "other species" i.e., 13 percent for hook-and-line gear, 61 percent for trawl gear, and 17 percent for pot gear.

Finally, the sideboard limitations for non-exempt AFA catcher vessels for skates gulfwide will be based on the ratio of 1995–1997 non-exempt AFA catcher vessel catch of "other species" to 1995–1997 "other species" TAC, which is 0.9 percent. These amounts are 33 mt (3,709 mt × 0.009) for all skates gulfwide, except Big and Longnose skates in the Central Regulatory Area, and 30 mt (3,284 mt × 0.009) for Big and Longnose skates in the Central Regulatory Area. Based on these sideboard limitations, and in accordance with § 679.20(d)(1)(iii), NMFS has established a directed fishing allowance of 0 mt for these targets. Therefore, NMFS is closing directed fishing for all skates gulfwide for the duration of the 2004 fishing year by non-exempt AFA catcher vessels.

**Response to Comments**

NMFS received one letter of comment in response to the proposed 2004 harvest specifications for skates in the GOA (69 FR 10190, March 4, 2004) and the Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) for a Revision to the Skate Harvest Specifications for the Year 2004, implemented under the authority of the Fishery Management Plan for Groundfish of the Gulf of Alaska. The letter contained four separate comments concerning the proposed 2004 harvest specifications for skates and their effect on the "other species" category TAC in the GOA that are summarized and responded to below. The letter also incorporated by reference comments that were submitted on the notice of availability for Amendment 63 (68 FR 67390, December 2, 2003). Those comments are summarized and responded to in the final rule implementing Amendment 63.

*Comment 1.* Due to the sensitive life history of skates (slow growth, late maturity, long life, and low fecundity) NMFS should adopt an exceptionally cautious management approach as frameworked in Option 3 (with suboption 1) analyzed in the EA/IRFA. The proposed 2004 skates harvest specifications are risk-prone and fail to prevent directed fishing for skates, fail to prevent localized depletion (especially of Big and Longnose skates), and fail to prevent the skate stocks from being depleted to levels considered near extinction.

*Response.* Option 3 was analyzed in the EA prepared for this action and considered by the GOA Plan Team, the Council, and its SSC, and AP. Option 3 would create separate OFLs, ABCs, and TACs for three skate targets (Big skates, Longnose skates, and other skates) in three separate management areas (Eastern, Central, and Western) in the GOA. Of all the options considered, the EA acknowledged that Option 3 would provide the most protection for skates in the GOA. Pacific ocean perch (POP) in the GOA is managed in this manner. The rationale for the management of POP in this manner is that they are long lived, slow to mature, and could be subject to localized depletion. These observations are just as relevant for skates. However, no evidence is available to show that localized depletion of any skate species has occurred or is occurring. The estimated skate biomass, based on NMFS trawl surveys, has increased from 13,575 mt in 1984 to 25,953 mt in 2003 in the Eastern GOA, from 23,534 mt in 1984 to 75,628 mt in 2003 in the Central Regulatory Area, and from 4,067 mt in 1984 to 15,089 mt in 2003 in the Western Regulatory Area. However, given the sensitive life history of skates, Option 3 is a viable management option and should continue to be considered in the future as more information on the biology and condition of the skate stocks becomes available or if directed fisheries for skates in other areas begin to be developed in the future.

Based on the lack of information available regarding skates, the SSC recommended that a single gulfwide

OFL be established for skates in 2004, and that a single ABC should be established for skates gulfwide with the exception of Big and Longnose skates in the Central Regulatory Area. The SSC noted that Big and Longnose skates in the Central Regulatory Area require additional protection at this time, since the 2003 directed fishery for skates preferentially targeted these two species and fishing effort was concentrated in the Central Regulatory Area. The Council and its committees also sought to avoid having to establish finely divided target fisheries with small regional quotas, which if unexpectedly reached, could have detrimental impacts on other more fully developed fisheries. The Plan Team recognized that landings of skates in the Central Regulatory Area were comprised mostly of Big skates and made a TAC recommendation for Big and Longnose skates in the Central Regulatory Area (3,284 mt) below the ABC level (4,435 mt) to prevent reaching the OFL for Big skates in this area. The AP and Council concurred with this recommendation, and it is incorporated into the final 2004 skate harvest specifications for the GOA.

Each option for the management of skates analyzed in the EA prepared for this action considered two suboptions. Suboption 1 would set TACs at the ABC level or a lower level sufficient to meet anticipated incidental catch needs in other directed fisheries during the fishing year. Suboption 1 would have the effect of prohibiting directed fishing for skates throughout the year. Suboption 2 would set TACs at ABC levels, allowing the Regional Administrator, after deducting anticipated incidental catch needs, to establish a directed fishing allowance for skates. The Council recommended Suboption 2. In either case, the retention of skates would be prohibited once TAC levels are reached. The Council's recommended TACs would allow for a modest directed fishery of about 1,000 mt in each of two specified skate fisheries. When this directed fishing allowance is reached, skates would be placed on bycatch status and directed fishing would be prohibited. The Council recommended, and NMFS is establishing, TACs for skates (totaling 6,993 mt) that are below ABC levels (totaling 8,144 mt) and substantially below the 2003 TAC for "other species" (11,260 mt) in the GOA.

These skate specifications do not constitute a risk-prone management approach. OFL and ABC levels are calculated using a risk-adverse tier 5 assessment where the OFL is set at the level estimated to be the natural mortality rate multiplied by the biomass estimate of skates. The ABC is set at 75 percent of that amount. The directed fishing allowances are set at conservative levels which include for the first time, estimates of incidental catch in the halibut fishery. Finally, NMFS assumes that the mortality of all groundfish, including skates, discarded at sea is 100 percent. This is a conservation assumption because skates are robust fish, with mortality rates that could be similar to or better than those of halibut released at sea in similar conditions. In the unlikely event that the entire TAC for skates were harvested, the conservative basis for setting the TACs would prevent the skate stocks from being depleted to levels considered near extinction.

*Comment 2.* We are concerned that once the TAC for Big and Longnose skates is reached in the Central GOA, fishing effort may shift and over exploit these and other skate species in other regions.

*Response.* Because the skate TACs are set conservatively, over exploitation of skate stocks is unlikely. Almost two thirds of the skate TACs have been reserved for incidental catch in other fisheries, including for the first time, the halibut fishery. Over the past 15 years, total skate catch has varied from 1 mt to 110 mt annually in the Eastern GOA and from 0 mt to 263 mt in the Western GOA. At this time no processors purchase skates in either the Eastern or Western GOA. The vessels currently participating in the skate fishery are mostly small hook-and-line vessels for which travel back and forth to fishing grounds in other management areas would not be feasible. The implementation of these specifications will reduce the total catch of skates during 2004 in the GOA compared to 2003 levels.

*Comment 3.* We are concerned that this action will raise the TAC for the "other species" category by 350 mt, rather than lowering it as we strongly advocate. This action will increase the allowable catches for such vulnerable species as sharks in the "other species" category.

*Response.* NMFS does not set ABCs for separate species in the "other species" category as stock assessments are not prepared for these species. Rather, the FMP set the TAC for the "other species"category at 5 percent of the total sum of TACs of groundfish for which stock assessments have been prepared. The suggested change to lower the "other species" TAC will require an FMP amendment. At this time, species in the "other species" category are not targeted in the GOA and the catch of these species is incidental to directed fisheries targeting other species. While this action does raise the TAC for "other species" by 350 mt, this action will not necessarily result in an increased catch of "other species" in the GOA because these species are not presently targeted by any fishery in the GOA.

In instances where directed fisheries have developed rapidly for species in the "other species" category, the Council has recommended, and NMFS has implemented, FMP amendments to remove those targeted species from the "other species" category so that they can be managed separately. This was the case in 1992, when the Council recommended, and NMFS implemented, Amendment 31 which removed Atka mackerel from the "other species" category, and more recently, when the Council recommended Amendment 63 in 2003 which removed skates from the "other species" category. If a single species, such as sharks, in the "other species" category was targeted to the exclusion of other species in the category at levels up to the "other species" TAC, then such harvest levels probably would be unsustainable and detrimental to the targeted fish stock and the Council and NMFS likely would act to manage such harvests at sustainable levels.

Rather than approach concerns about "other species" in a piecemeal fashion, the Council is developing an FMP amendment with a more comprehensive approach toward the management of nontarget species. An ad hoc committee has suggested that one management approach could be to place the newly formed nontarget species category on bycatch status year round and prohibit directed fishing for these species until an adequate stock assessment for the species could be prepared that demonstrated what (if any) directed fishing activities would be sustainable. Species that could be considered for inclusion in the nontarget species categories are: (1) all the species currently in the "other species" category, such as sharks, (2) species for which stock assessments are currently poor, such as Atka mackerel in the GOA, (3) species that are a very minor component of a larger category, such as deep water sole in the deep water flatfish category, (4) species that are uncommon in the GOA or at the edge of their geographic range, such as several species in the other slope rockfish category, (5) all forage fish, and (6) nonspecified species such as grenadiers, wrymouths, prowfish, etc.

*Comment 4.* If a reduction of the "other species" TAC is not possible under the current FMP, we strongly urge

NMFS not to implement Amendment 63 and to prohibit directed fishing for skates until harvests of both skates and "other species" combined will not exceed the catch of "other species" in 2003.

*Response.* Failure to implement Amendment 63 and these 2004 harvest specifications for skates would mean that conservation and management measures needed for skates would not be available. No additional protection would be provided for "other species" because the TAC for "other species" is not reached. With the implementation of these harvest specifications for skates in 2004, the total, combined catch of skates and "other species" in 2004 likely will be lower than the 2003 "other species" catch. A significant increase or decrease in the incidental catch of the species remaining in the "other species" category is not likely. Also, the 2004 management measures include setting the skate directed fishing allowances at lower levels than the skate directed fishing catch in 2003. Therefore, a reduction in the total catch of skates (including Big and Longnose skates in the Central GOA) is likely in 2004, compared to 2003.

Not implementing Amendment 63 would place skate species at risk of overfishing. The implementation of Amendment 63 will improve the protection for skates, and will not adversely impact the species in the "other species" category because of the lack of interest in a directed fishery on these species. NMFS will carefully monitor the harvest of "other species" to determine if a directed fishery develops on any of the species in this complex and to determine what appropriate steps may be needed to prevent overfishing.

## Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final specification is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this final specification is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

A FRFA was prepared for the final 2004 harvest specifications for skates to address the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Fairness Act of 1996.

### Issues Raised by Public Comments on the IRFA

The proposed rule was published in the **Federal Register** on March 4, 2004 (69 FR 10190). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the Classification section of the preamble to that rule. The public comment period ended on March 19, 2004. No comments were received on the IRFA or regarding the economic impact of this rule.

### Number and Description of Small Entities Affected by the Rule

The entities directly regulated by this action, if adopted, would be the fishing operations harvesting species in the "other species" complex in the GOA, using hook-and-line or trawl gear. These vessels may be targeting skates (the only species in the "other species" category currently fished as a target), or they may be harvesting skates and other species in the "other species" category incidental to other targeted fishing operations (e.g., fishing for Pacific cod or shallow-water flatfish). Since any hook-and-line or trawl operation in the GOA may harvest the "other species" complex, the universe of potentially affected operations includes all GOA hook-and-line and trawl vessels. Pot gear is not an effective gear for targeting skates because regulations limit the size of tunnel openings to no more than 36 inches (91 cm) in circumference.

In 2001, the universe of potentially affected vessels included 670 hook-and-line vessels and 138 trawlers. Of these, 650 were small hook-and-line catcher vessels, 15 were small hook-and-line catcher/processors, 120 were small trawl catcher vessels, and 4 were small trawl catcher/processors. This size determination is based on operation revenues from groundfish fishing in Alaska. Moreover, the data are not available to take account of affiliations between fishing operations and associated processors, or other associated fishing operations. For these reasons, these counts may overstate the numbers of small entities potentially directly regulated by the proposed action. Average Alaska groundfish revenues, in 2001, for these small entities were $100,000 for hook-and-line catcher vessels, $1.82 million for hook-and-line catcher/processors, $370,000 for trawl catcher vessels, and $1.80 million for trawl catcher/processors. The directed skate fishery emerged in 2003; 77 hook-and-line catcher vessels, 53 trawl catcher vessels, 13 hook-and-line catcher/processors, and 10 trawl catcher/processors, took part in the fishery in 2003, producing an estimated ex-vessel gross revenue of about $1.7 million. This suggests average revenues for these vessels were about $11,000.

### Description of Other Alternatives Analyzed

Alternative 1 creates a single GOA-wide OFL and ABC for all skate species. This alternative fails to protect the stocks. It provides no protection against localized depletion or against selective fishing for larger skates. The National Environmental Policy Act analysis determined that this alternative had a "significantly adverse" environmental impact.

Alternative 2 creates three GOA-wide OFLs for skate species or species groups (Big skates, Longnose skates, and Other skates) and three GOA-wide ABCs for the same species or species groups. This alternative did not provide protection against spatial depletion of skate stocks, particularly those in the Central GOA.

Alternative 3 creates a separate OFL and a separate ABC for each of the species and species groups defined under Option 2, in the Western, Central and Eastern management areas. This alternative provided the greatest level of protection for skate stocks, however, the multiplicity of relatively small OFLs under this alternative created the greatest potential for the closure of a fishery harvesting skates incidentally while targeting another species.

Alternative 4 combines the Big skate and Longnose skate management area-specific OFLs and ABCs of Alternative 3, with the GOA-wide OFL and ABC for Other skates in Alternative 2. It therefore falls between these in terms of its adverse impacts on small entities. This alternative aggregates the "Other skates" OFLs across all three areas, but retains separate Big and Longnose skate OFLs in each of the three management areas (a total of six OFLs). These separate OFLs were a source of concern to industry.

Alternative 5 creates a GOA-wide OFL for all species combined. ABCs would be established in each management area in the GOA for a Big/Longnose skate grouping. A GOA-wide ABC would be established for "Other" skates. In the Central GOA a TAC would be established for combined Big and Longnose skate catch. This TAC will equal 10 percent of the estimated biomass of Big skates in the Central Area (this would have been the OFL for Big skates in this area if such an OFL had been promulgated). This option was meant to be in place for one year, and to be reviewed at the end of 2004, in light of species-specific harvest data to be collected in 2004. This alternative

was explicitly crafted to protect skate stocks while imposing a relatively small burden on fishing operations. While it is less burdensome on small operations than Alternatives 2, 3, and 4, it has more separate TACs and ABCs than Alternative 6, the preferred alternative.

**Recordkeeping and Reporting Requirements**

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105 277, Title II of Division C; Pub L. 106 31, Sec. 3027; and Pub L. 106 554, Sec. 209.

Dated: May 5, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 04–10782 Filed 5–11–04; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 69, No. 92
Wednesday, May 12, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2004–SW–03–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 206L–1 and 206L–3 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (Bell) helicopters. The AD would require a one-time inspection of the adjustable stop screws of the magnetic brake assembly; repairing, as appropriate, certain mechanical damage to the cyclic and collective flight control magnetic brake arm assembly (arm assembly), if necessary; and installing the stop screw with the proper adhesive, adjusting the arm assembly travel and applying slippage marks. This proposal is prompted by reports that the magnetic brake adjustable screws have backed out, which limited travel of the arm assembly. The actions specified by the proposed AD are intended to detect loose adjustable stop screws, that could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before July 12, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2004–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA–public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2004–SW–03–AD." The postcard will be date stamped and returned to the commenter.

### Discussion

This document proposes adopting a new AD for Bell Model 206L–1 and 206L–3 helicopters with Instrument Flight Rule (IFR) Kit, part number (P/N) 206–705–001, –101, or –103, installed, and all delivered spare magnetic brakes, P/N 204–001–376–003, manufactured by Memcor Truohm, Inc. (M.T. Inc.) as P/N MP 498–3, installed. The AD would require, within 100 hours time-in-service or within 90 days, whichever occurs first, and before installation of an affected magnetic brake, a one-time inspection of the adjustable stop screws of the magnetic brake assembly; repairing, as appropriate, certain mechanical damage to the arm assembly, if necessary; and installing the stop screw with the proper adhesive, adjusting the arm assembly travel and applying slippage marks. This proposal is prompted by reports that the magnetic brake adjustable screws have backed out, which limited travel of the arm assembly. The actions specified by the proposed AD are intended to detect loose adjustable stop screws, that could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Bell Model 206L–1 and 206L–3 helicopters with IFR Kit, P/N 206–705–001, –101, or –103, installed, and all delivered spare magnetic brakes, P/N 204–001–376–003, manufactured by Memcor Truohm, Inc. as P/N MP 498–3. Transport Canada advises that the stop screws, P/N MS51959–3, of the magnetic brake, P/N 204–001–376–003 (Memcor Truohm P/N MP 498–3), were installed without the proper adhesive.

Bell has issued Alert Service Bulletin (ASB) No. 206L–01–122, dated October 3, 2001, which specifies a one-time inspection of the magnetic brake adjustable stop screw, P/N MS51959–3; repairing any arm assembly mechanical damage created by the screws; and installing the stop screw with the proper adhesive and adjusting the arm assembly shaft travel. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–2002–16, dated March 4, 2002, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this

type design that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require inspecting the adjustable stop screws of the magnetic brake assembly, repairing certain mechanical damage to the arm assembly, and installing the stop screw with the proper adhesive, adjusting the arm assembly travel and applying slippage marks. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

The FAA estimates that 577 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $3,785. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $298,500, assuming that 75 helicopters in the U.S. will require the actions described in this AD.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the economic evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**Bell Helicopter Textron Canada:** Docket No. 2004–SW–03–AD.

*Applicability:* Model 206L–1 and 206L–3 helicopters with Instrument Flight Rule (IFR) Kit, part number (P/N) 206–705–001, –101, or –103, and a magnetic brake, P/N 204–001–376–003, manufactured by Memcor Truohm, Inc. (M.T. Inc.) as P/N MP 498–3, installed, certificated in any category.

*Compliance:* Required within 100 hours time-in-service or 90 days, whichever occurs first, and before installation of any affected magnetic brake, unless accomplished previously.

To detect loose adjustable stop screws, which could result in limiting the travel of the cyclic and collective arm assembly, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect and, if necessary, repair, adjust, and apply slippage marks to the magnetic brake assembly by following the Accomplishment Instructions, paragraphs 6. through 12., in Bell Helicopter Textron Alert Service Bulletin (ASB) No. 206L–01–122, dated October 3, 2001, except if damage to the arm assembly exceeds 0.030 inch (0.762 mm), replace the magnetic brake assembly with an airworthy magnetic brake assembly. Contacting the manufacturer is not required.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

**Note:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2002–16, dated March 4, 2002.

Issued in Fort Worth, Texas, on May 3, 2004.

**Kim Smith,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 04–10745 Filed 5–11–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–NM–351–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. That AD currently requires a one-time inspection to detect incorrect wiring of the electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the auxiliary power unit (APU); disconnection and reconnection of the wiring, as necessary; and adjustment of the length of the harnesses on the fire extinguisher bottles to avoid future misconnections. This action would require additional adjustment of the length of the harnesses; installation of a color-coded identification system to avoid misconnections during maintenance; and a functional test of the engine fire extinguisher system. This action would also expand the applicability of the existing AD to include additional airplanes. The actions specified by the proposed AD are intended to prevent the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguisher system for the engines and the APU, which could result in the inability to put out a fire in an engine or in the APU. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by June 11, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–351–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-*

*nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–351–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–351–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–351–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On May 17, 2001, the FAA issued AD 2001–10–15, amendment 39–12241 (66 FR 28646, May 24, 2001), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. That AD requires a one-time inspection to detect incorrect wiring of the electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the auxiliary power unit (APU); disconnection and reconnection of the wiring, as necessary; and adjustment of the length of the harnesses on the fire extinguisher bottles to avoid future misconnections. That action was prompted by the issuance of mandatory continuing airworthiness information issued by the Departmento de Aviacao Civil (DAC), the Brazilian civil airworthiness authority. The requirements of that AD are intended to prevent the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguisher system for the engines and APU, which could result in the inability to put out a fire in an engine or in the APU.

**Actions Since Issuance of Previous Rule**

Since the issuance of that AD, the manufacturer has issued new service information which contains new requirements.

**Explanation of Relevant Service Information**

EMBRAER has issued Service Bulletin 145–26–0010, Change 03, dated August 28, 2002, which describes procedures for modifying the electrical connectors and wire harnesses for the engine and APU fire extinguisher bottle cartridges, and pressure switches. The procedures for modification include adjusting the length of the harness system. Following this adjustment, the modification includes installing identification sleeves on the harness and the electrical connectors of the harness, and installing matching color-coded identification stickers on the fire extinguisher bottles to identify the outlet and switch connections. The service bulletin also provides procedures for replacing certain clamps with new, larger clamps or installing tiedown straps; installing new terminals if necessary; and carrying out a functional test of the engine fire extinguisher system.

The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–09–01R1, dated June 26, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

EMBRAER Service Bulletin 145–26–0010 refers to Pacific Scientific Service Bulletin 26–1130d, dated June 18, 2001, as an additional source of service information for accomplishment of the installation of the color-coded identification stickers. The Pacific Scientific service bulletin is included in the EMBRAER service bulletin.

**FAA's Conclusions**

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–10–15 to continue to require a one-time inspection to detect incorrect wiring of electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the APU; disconnection and reconnection of the wiring, as necessary; and adjustment of the length of the harnesses on the fire extinguisher bottles to avoid future misconnections. This proposed AD would require an additional adjustment of the harnesses; and installing color-coded identification sleeves and heat-shrinkable sleeves to the subject electrical harness connectors, and color-coded stickers to identify the functions of the engine and APU fire extinguisher bottles. This proposed AD also would require replacing clamps with new,

larger clamps or installing tiedown straps; and installing new terminals if necessary. This proposed AD also would require a functional test of the engine fire extinguisher system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

**Changes to 14 CFR Part 39/Effect on the Proposed AD**

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; therefore, paragraphs (b) and (c) and Notes 1 and 3 of AD 2001–10–15 are not included in this proposed AD.

**Cost Impact**

There are approximately 435 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2001–10–15 and continued in this proposed AD take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $84,825, or $195 per airplane.

The new actions that are proposed in this AD action would take approximately 7 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $93 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $238,380, or $548 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–12241 (66 FR 28646, May 24, 2001), and by adding a new airworthiness directive (AD), to read as follows:

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket 2002–NM–351–AD. Supersedes AD 2001–10–15, Amendment 39–12241.

*Applicability:* Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–26–0010, Change 03, dated August 28, 2002; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguisher system for the engines and auxiliary power unit (APU), which could result in the inability to put out a fire in an engine or in the APU, accomplish the following:

**Restatement of the Requirements of AD 2001–10–15**

*Inspection*

(a) For airplanes listed in EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001: Within 100 flight hours after June 8, 2001 (the effective date of AD 2001–10–15, amendment 39–12241), perform a one-time general visual inspection to detect incorrect wiring of electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the APU, in accordance with paragraph 3.D. of the Accomplishment Instructions of EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001; or Change 01, dated June 25, 2001.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If the wiring connections are correct: Prior to further flight, adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

(2) If the wiring connections are incorrect: Prior to further flight, re-connect them and adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

**New Requirements of This AD**

*Inspection*

(b) For airplanes not subject to paragraph (a) of this AD: Within 100 flight hours after the effective date of this AD, perform a one-time general visual inspection to detect incorrect wiring of electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the APU, in accordance with paragraph 3.D. of the Accomplishment Instructions of EMBRAER Service Bulletin 145–26–0009, Change 01, dated June 25, 2001.

(1) If the wiring connections are correct: Prior to further flight, adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

(2) If the wiring connections are incorrect: Prior to further flight, re-connect them and adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

*Modifications*

(c) For all airplanes: Within 4,000 flight hours after the effective date of this AD, modify the electrical harnesses and electrical connectors of the engine and APU fire extinguisher system, including installing identification sleeves and color-coded identification stickers, in accordance with

the Accomplishment Instructions of EMBRAER Service Bulletin 145–26–0010, Change 03, dated August 28, 2002.

*Parts Installation*

(d) As of the effective date of this AD, no person may install on any airplane, engine fire extinguisher bottle part number (P/N) 33600057–1 or P/N 33600057–5, serial number (S/N) 26916D1 through 42300D2 inclusive; and APU fire extinguisher bottles P/N 30100050–1 or P/N 30100050–5, SN 301209A1 through SN 38950A1, inclusive; unless color-coded stickers are installed in accordance with paragraph (c) of this AD.

*Actions Accomplished per Previous Issues of the Service Bulletin*

(e) Actions accomplished prior to the effective date of this AD in accordance with EMBRAER Service Bulletin 145–26–0010, dated June 25, 2001; Change 01, dated January 3, 2002; or Change 02, dated June 5, 2002; are considered acceptable for compliance with the corresponding actions specified in this AD.

*Alternative Methods of Compliance*

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in Brazilian airworthiness directive 2001–09–01R1, dated June 26, 2002.

Issued in Renton, Washington, on May 5, 2004.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10744 Filed 5–11–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–280–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that currently requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This action would require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate updated Airworthiness Limitation Items, Safe Life Items, and Certification Maintenance Requirements. The actions specified by the proposed AD are intended to ensure the structural integrity of the airplane by ensuring that fatigue cracking of certain structural elements is detected and corrected in a timely manner. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by June 11, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–280–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–280–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–280–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On October 22, 2001, the FAA issued AD 2001–21–04, amendment 39–12475 (66 FR 54656, October 30, 2001), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, to require revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. That action was prompted by issuance of mandatory continuing airworthiness information by the Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for The Netherlands. The requirements of that AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected. Such fatigue cracking could

adversely affect the structural integrity of the affected airplanes.

**Explanation of Relevant Service Information**

Fokker Services B.V. has issued Issue 2 of Report SE–623, "Fokker 70/100 Airworthiness Limitation Items and Safe Life Items," dated September 1, 2001, of the Fokker 70/100 Maintenance Review Board (MRB) document. (The existing AD requires incorporation of the original issue of Report SE–623, dated June 1, 2000, into the ALS of the Instructions for Continued Airworthiness.) Issue 2 of Report SE–623 updates certain Airworthiness Limitations Items (ALIs) and Safe Life Items (SLIs). (The items in this report are now contained in Section 6 of the Fokker 70/100 MRB document, Revision 10, dated October 1, 2001.)

Fokker Services B.V. has also issued Issue 5 of Report SE–473, "Fokker 70/100 Certification Maintenance Requirements," dated July 16, 2001, of Appendix 1 of the Fokker 70/100 Maintenance Review Board (MRB) document. Report SE–473, Issue 5, contains the Certification Maintenance Requirements (CMRs) for systems on Fokker Model F.28 Mark 0070 and 0100 series airplanes. (The items in this report are now contained in Section 6 of the Fokker 70/100 MRB document, Revision 10.)

The CAA–NL classified Reports SE–623, Issue 2, and SE–473, Issue 5, as mandatory, and issued Dutch airworthiness directive BLA 2002–062, dated May 31, 2002, to ensure the continued airworthiness of these airplanes in the Netherlands.

**FAA's Conclusions**

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–21–04 to continue to require revising the ALS of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. The proposed AD also would require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate updated ALIs, SLIs, and CMRs. The actions would be required to be accomplished in accordance with Report SE–623, "Fokker 70/100 Airworthiness Limitation Items and Safe Life Items," and Report SE–473, "Fokker 70/100 Certification Maintenance Requirements," described previously.

**Changes to 14 CFR Part 39/Effect on the AD**

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD. Therefore, Note 1 and paragraph (d) of AD 2001–21–04 are not included in this AD, and paragraph (c) of AD 2001–21–04 has been revised and included as paragraph (f) of this AD.

**Cost Impact**

There are approximately 74 airplanes of U.S. registry that would be affected by this proposed AD.

The ALS revision that is currently required by AD 2001–21–04 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $4,810, or $65 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed new requirement of this AD on U.S. operators is estimated to be $4,810, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD-rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–12475 (66 FR 54656, October 30, 2001), and by adding a new airworthiness directive (AD), to read as follows:

**Fokker Services B.V.:** Docket 2002–NM–280–AD. Supersedes AD 2001–21–04, Amendment 39–12475.

*Applicability:* All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure that fatigue cracking of certain structural elements is detected and corrected, and to ensure the structural integrity of affected airplanes, accomplish the following:

**Requirements of AD 2001–21–04**

*Airworthiness Limitations Revision*

(a) Within 30 days after December 4, 2001 (the effective date of AD 2001–21–04, amendment 39–12475), revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness by incorporating Report SE–623, "Fokker 70/100 Airworthiness Limitations Items and Safe Life Items," of Appendix 1 of Fokker 70/100 Maintenance Review Board (MRB) document, dated June 1, 2000.

(b) Except as provided by paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

**New Requirements of This AD**

*New Airworthiness Limitations Revision*

(c) Within 6 months after the effective date of this AD, revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness by incorporating Report SE–623, "Fokker 70/100 Airworthiness Limitations Items and Safe Life Items," Issue 2, dated September 1, 2001; and Report SE–473, "Fokker 70/100 Certification Maintenance Requirements," Issue 5, dated July 16, 2001; into Section 6 of the Fokker 70/100 MRB document. (These reports are already incorporated into Fokker 70/100 MRB document, Revision 10, dated October 1, 2001.) Once the actions required by this paragraph have been accomplished, the original issue of Report SE–623, "Fokker 70/100 Airworthiness Limitations Items and Safe Life Items," dated June 1, 2000, may be removed from the ALS of the Instructions for Continued Airworthiness.

(d) If the requirements of paragraph (c) of this AD are accomplished within the compliance time specified in paragraph (a) of this AD, it is not necessary to accomplish the requirements of paragraph (a) of this AD.

(e) After the actions specified in paragraph (c) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (c) of this AD.

**Alternative Methods of Compliance**

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in Dutch airworthiness directive 2002–062, dated May 31, 2002.

Issued in Renton, Washington, on May 5, 2004.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10743 Filed 5–11–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2004–NM–46–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require a test for free movement of the capsule/bearing of the nose landing gear (NLG), and related investigative, significant, and corrective actions. This action is necessary to prevent failure of the NLG to extend fully, which could result in reduced controllability of the airplane during landing. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by June 11, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2004–NM–46–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004–NM–46–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

ANM–114, Attention: Rules Docket No. 2004–NM–46–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that there have been several incidents in which the nose landing gear (NLG) did not fully extend, necessitating an emergency landing. Investigation suggests that the cause may be related to binding between the upper and lower sliding/support bearings and the NLG capsule that is part of the shortening mechanism. High friction at the upper bearing or lower bearing may prevent free movement of the NLG capsule. This condition, if not corrected, could result in failure of the NLG to extend fully, and consequent reduced controllability of the airplane during landing.

**Explanation of Relevant Service Information**

BAE Systems (Operations) Limited has issued Alert Service Bulletin J41-A32–082, Revision 1, dated February 20, 2004. That service bulletin describes procedures for a test for free movement of the NLG capsule/bearing, and related investigative, significant, and corrective actions. These actions are described below.

The BAE Systems service bulletin refers to APPH Service Bulletin AIR83586–32–22, Revision 1, dated February 2004, as an additional source of service information. Paragraph 2.A. (Part 1) of that service bulletin describes procedures for the initial test for free movement of the NLG capsule. Paragraph 2.B. (Part 2) of that service bulletin describes procedures for related investigative, significant, and corrective actions following the initial test. These related investigative, significant, and corrective actions entail cleaning and re-greasing the bearings, and repeating the test for free movement (*i.e.*, Part 1 of the APPH service bulletin). If the test immediately following the cleaning and re-greasing of bearings fails, corrective actions entail repairing or replacing the NLG.

If the NLG capsule/bearing moves freely during the initial test, the BAE Systems service bulletin specifies a compliance time of 3,000 flight hours for the related investigative, significant, and corrective actions (Parts 1 and 2 of the APPH service bulletin). If the movement of the NLG capsule/bearing is restricted during the initial test, the BAE Systems service bulletin specifies that the related investigative and corrective actions (Parts 1 and 2 of the APPH service bulletin) must be done before further flight. If the capsule moves freely during the test immediately following accomplishment of Part 2, the BAE Systems service bulletin specifies repeating the test within 600 flight hours.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified the service bulletins as mandatory and issued British emergency airworthiness directive G–2004–0003, dated February 24, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom.

**FAA's Conclusions**

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the BAE Systems service bulletin described previously, except as discussed below.

**Differences Between Proposed AD and Service Bulletins**

Although the service bulletins specify that operators may contact BAE Systems or APPH for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or the CAA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

This proposed AD refers to the flow chart in the BAE Systems service bulletin for compliance times for certain actions. The flow chart does not clearly state a compliance time for applicable corrective actions if the movement of the NLG capsule/bearing is restricted during any test. Therefore, paragraph (c) of this AD specifies that, if the movement of the NLG capsule/bearing is restricted during any test, the applicable corrective actions must be accomplished before further flight.

For compliance times, the flow chart in the BAE Systems service bulletin specifies a certain number of "flying hours." Paragraph (c) of this proposed AD specifies performing the actions at the compliance times in the flow chart of the BAE Systems service bulletin. However, where the flow chart specifies "flying hours," the definition in this proposed AD would be "flight hours." This decision is based on our determination that "flying hours" may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry.

Although the Accomplishment Instructions of the BAE Systems service bulletin describe procedures for submitting a form reporting inspection results to the manufacturer, this proposed AD would not require those actions.

**Cost Impact**

We estimate that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $22,230, or $390 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship

between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Docket 2004–NM–46–AD.

*Applicability:* All Model Jetstream 4101 airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the nose landing gear (NLG) to extend fully, which could result in reduced controllability of the airplane during landing, accomplish the following:

**Service Bulletin Reference and Clarifications**

(a) The term "service bulletin," as used in this AD, means BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, dated February 20, 2004.

(1) The term "flow chart," as used in this AD, means the flow chart following paragraph 1.M. of BAE Systems Alert Service Bulletin J41–A32–082, Revision 1.

(2) BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, refers to APPH Service Bulletin AIR83586–32–22, Revision 1, dated February 2004, as an additional source of service information for accomplishing the actions in the BAE Systems service bulletin.

(3) Actions accomplished before the effective date of this AD per the Accomplishment Instructions of BAE Systems Alert Service Bulletin J41–A32–082, dated February 11, 2004, are considered acceptable for the corresponding actions required by this AD. (The original issue of BAE Systems Alert Service Bulletin J41–A32–082 refers to the original issue of APPH Service Bulletin AIR83586–32–22, dated February 2004, as an additional source of service information for accomplishing the actions in the BAE Systems service bulletin.)

(4) Where BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, and APPH Service Bulletin AIR83586–32–22, Revision 1, specify to contact BAE Systems or APPH for repair instructions, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Civil Aviation Authority (CAA) (or its delegated agent).

(5) Where the flow chart in BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, specifies "flying hours," for the purposes of this AD, this means "flight hours."

(6) Where BAE Systems Alert Service Bulletin J41–A32–082, Revision 1, specifies to complete a reporting form and return it to the manufacturer, this AD does not require that action.

**Initial Test**

(b) Within 300 flight cycles or 30 days after the effective date of this AD, whichever occurs first: Perform a test for free movement of the NLG capsule/bearing, as specified in the flow chart of the service bulletin. Do all of the actions per the Accomplishment Instructions of the service bulletin.

**Note 1:** As specified in the flow chart in the service bulletin, only the actions in paragraph 2.A. (Part 1) of the Accomplishment Instructions of APPH Service Bulletin AIR83586–32–22, Revision 1, dated February 2004, are required by paragraph (a) of this AD.

**Related Investigative, Significant, and Corrective Actions**

(c) Perform related investigative, significant, and corrective actions as specified in the flow chart of the service bulletin, at the compliance times specified in the flow chart of the service bulletin. Do all of the actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (a)(4) of this AD. During any test, if the movement of the capsule/bearing is restricted, the applicable corrective actions must be accomplished before further flight.

**Parts Installation**

(d) As of the effective date of this AD, no person may install an NLG on any airplane unless it is inspected per the requirements of this AD.

**Alternative Methods of Compliance**

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

**Note 2:** The subject of this AD is addressed in British emergency airworthiness directive G–2004–0003, dated February 24, 2004.

Issued in Renton, Washington, on May 5, 2004.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10742 Filed 5–11–04; 8:45 am]

BILLING CODE 4910–13–P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 15, 16, 17, 18, 19 and 21

**RIN 3038–AC08**

### Reporting Levels and Recordkeeping

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing several amendments to its large trader reporting rules. First, the Commission is proposing to amend part 15 of its rules to introduce additional contracts and to raise the reporting levels at which futures commission merchants, clearing members and foreign brokers must file large trader reports in certain commodities. Second, the Commission is proposing to amend its rules to address the manner in which certain new products, such as exchanges of futures for swaps, should be reported under the Commission's rules. Third, the Commission is proposing to amend its rules to address current data transmission practices, to foster innovative means of filing Forms 102 by reporting firms, and to eliminate Form 103 for the submission of special call data by large traders. Finally, the Commission is proposing a number of other technical and clarifying amendments to the large trader reporting rules.

**DATES:** Comments must be received by June 11, 2004.

**ADDRESSES:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile to 202–418–5521, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Large Trader Reporting

Rules." Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following comment submission instructions.

**FOR FURTHER INFORMATION CONTACT:** Gary Martinaitis, Associate Deputy Director for Market Information, Market Surveillance Section (telephone 202–418–5209, e-mail *gmartinaitis@cftc.gov*), Bruce Fekrat, Attorney, Office of the Director (telephone 202–418–5578, e-mail *bfekrat@cftc.gov*), Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

## I. Reporting Levels

The Commission's large-trader reporting system is an important Commission oversight tool. The rules governing this system require futures commission merchants, clearing members and foreign brokers (collectively referred to as reporting firms) to report to the Commission position information of the largest futures and options traders and require the traders themselves to provide certain identifying information. Reporting levels are set in the designated futures and option markets under the authority of sections 4i and 4c of the Commodity Exchange Act (CEA or Act) to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent price manipulation and market congestion and to enforce speculative position limits pursuant to section 4a of the Act. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures markets and other matters of public interest.

Generally, the firm carrying a trader's reportable position files large trader reports.[1] The Commission periodically reviews information concerning trading volume, open interest, and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage of open interest is adequate for effective market surveillance. In this regard, the Commission also is mindful of the paperwork burden associated with these reporting requirements and reviews them with an eye to streamlining that burden to the extent compatible with its responsibilities for rigorous surveillance of the futures and option markets. The Commission's most recent review of reporting levels indicates that the relative size of trading volume, open interest, and position sizes of individual traders would enable the Commission to raise reporting levels as follows: (1) Milk, Class III from 25 to 50 contracts; (2) Soybeans from 100 to 150 contracts; (3) Wheat from 100 to 150 contracts; (4) Corn from 150 to 250 contracts; (5) Sugar No. 11 from 400 to 500 contracts; (6) Cotton from 50 to 100 contracts; (7) Natural Gas from 175 to 200 contracts; (8) Crude Oil, Sweet—No. 2 Heating Oil Crack Spread from 25 to 250 contracts; (9) Crude Oil, Sweet—Unleaded Gasoline Crack Spread from 25 to 150 contracts; (10) Unleaded Gasoline—No. 2 Heating Oil Spread Swap from 25 to 150 contracts; (11) 1-Month LIBOR from 300 to 600 contracts; (12) 30-Day Fed Funds from 300 to 600 contracts; (13) 3-Month Eurodollar Time Deposit Rates from 1000 to 3000 contracts; (14) 2-Year U.S. Treasury Notes from 500 to 1000 contracts; (15) 5-Year U.S. Treasury Notes from 800 to 2000 contracts; (16) 10-Year U.S. Treasury Notes from 1000 to 2000 contracts; (17) 30-Year U.S. Treasury Bonds from 1000 to 1500 contracts; (18) E-Mini S&P 500 Stock Price Index from 300 to 1000 contracts;[2] and (19) TRAKRS from 25,000 to 50,000.

The general default reporting level for all positions, including positions in broad-based security indices, is currently 25 contracts. The Commission is proposing to enumerate a new default reporting level of 200 contracts specifically for broad-based security indices. Under this proposal, the following enumerated commodities would no longer be individually itemized in Rule 15.03 and therefore would be subject to the proposed default reporting level of 200 contracts: (1) S&P 400 Midcap Stock Index—currently 100 contracts; (2) Dow Jones Industrial Average Index—currently 100 contracts; (3) New York Stock Exchange Composite Index—currently 50 contracts; (4) Amex Major Market Index, Maxi—currently 100 contracts; (5) NASDAQ 100 Stock Index—currently 100 contracts; (6) Russell 2000 Stock Index—currently 100 contracts; (7) Value Line Average Index—currently 50 contracts; and (8) NIKKEI Stock Index—currently 100 contracts. The S&P 500 Stock Price Index and the Municipal Bond Index would remain at 1000 and 300 contracts, respectively.

Concurrently, the Commission is proposing to establish enumerated reporting levels for three German federal government debt instruments. These proposed reporting levels are as follows: (1) 10-Year German Federal Government Debt—1,000 contracts; (2) 5-Year German Federal Government Debt—800 contracts; (3) 2-Year German Federal Government Debt—500 contracts.

The Commission is also proposing a reporting level for a category of contracts that a new exchange, HedgeStreet, Inc. (HedgeStreet), intends to offer. HedgeStreet has represented that it intends to offer European-style binary options that are based on economic indexes[3] and that pay a fixed $10.00 if in the money upon expiration. The put and call options that together would form a contract bundle are separate contracts and thus the average value of each contract (put or call) would be $5. In light of the relatively low value of these products, the Commission is proposing a reporting level of 125,000 contracts. This reporting level would be limited to economic indices offered by HedgeStreet in the manner and size described. Absent further Commission rulemaking, any other product offered by HedgeStreet would be subject to the default reporting level of 25 contracts.[4]

[1] Specifically, parts 17 and 18 of the Commission's regulations require reports from firms and traders, respectively, when a trader holds a "reportable position." *See* 17 CFR parts 17 and 18. A reportable position is any open contract position, as further defined in the rules, that at the close of the market on any business day equals or exceeds the quantity specified in Commission Rule 15.03. *See* 17 CFR 15.00 and part 150. The firms that carry accounts for traders holding reportable positions are required to identify those accounts on Form 102 and to report positions in the accounts to the Commission. The individual trader who holds or controls the reportable position, however, is required to report to the Commission only in response to a special call.

[2] Currently, the reporting levels for the S&P 500 Stock Price Index contract and the E-Mini S&P 500 Stock Price Index contract are different (1000 and 300, respectively). As amended, the reporting levels for the S&P 500 Stock Price Index contract and the E-Mini S&P 500 Stock Price Index contract would be the same. Accordingly, the Commission is proposing to delete the separate reference to the E-Mini S&P 500 Stock Price Index in § 15.03. In this regard, subject to this one exception for the E-Mini S&P 500 Stock Price Index contract, the Commission's practice has been to apply the same reporting level to an e-mini contract as applies to the related full size contract. Accordingly, if this proposed amendment to the reporting level for the E-Mini S&P 500 Stock Price Index is adopted, all e-mini contracts will be subject to that reporting convention.

[3] The Commission understands that HedgeStreet products could be based on either macroeconomic or microeconomic indexes.

[4] The low value of these HedgeStreet products could result in the reporting of positions that numerically are very large. Due to current limitations in the Commission's large trader record format (*see* 17 CFR 17.00(g)(1)), the proposed rulemaking provides for these HedgeStreet positions to be reported under 17 CFR part 17 by rounding down to the nearest 1000 and then dividing by 1000. For example, a position of 177,955 contracts would be rounded down to 177,000, divided by 1000 and reported as 177.

The referenced HedgeStreet and German federal government debt contracts are likely to be traded prior to the adoption of final reporting levels. In the absence of the adoption of final reporting levels, the Commission's default reporting level of 25 contracts would apply. To relieve market participants from compliance with the default reporting level, the Commission hereby is granting no-action relief to futures commission merchants, members of contract markets and foreign brokers that comply with the large trader reporting requirements based upon proposed reporting levels for the referenced HedgeStreet and German federal government debt contracts.

Accordingly, the Commission will not bring any enforcement action against any such futures commission merchant, member of a contract market or foreign broker. Such persons, however, must bring their conduct into compliance with final reporting levels to the extent that final reporting levels differ from those proposed herein.

The proposed amendments to adjust reporting levels would decrease the number of daily position reports, such as Series '01 Reports and Forms 102, that reporting firms are currently required to file. The number of Forms 40 filed by large traders would also decrease. However, the percent of total market open interest reported through the large trader system would remain at the level deemed sufficient for rigorous market surveillance based upon the Commission's administrative experience.

Not all reporting firms may elect to report under the proposed higher, and therefore potentially less burdensome, reporting levels. This is due to the fact that exchanges also maintain large trader reporting systems that are similar in most respects to the Commission's system. The exchanges set their own reporting levels, which for particular contracts may vary from Commission set levels. When exchange reporting levels are set lower than those set by the Commission, firms may report to the Commission at the lower exchange set level, thereby saving any cost associated with reprogramming their reporting systems to reflect the proposed increases. The Commission, however, only requires information on Forms 40 and 102 for positions that exceed its levels.

## II. Trades Involving the Exchange of Futures

On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA), extensively revising the CEA.[5] The CFMA facilitated the introduction of certain new products by the exchanges, including certain off-centralized-market trades such as exchanges of futures for swaps (EFS).[6] As of now, three exchanges have rules permitting EFSs and three have rules permitting other types of off-centralized-market trades referred to as exchanges of futures for risk (EFR) and exchanges of futures for options (EFO).[7]

The Commission's rules do not address how contract markets should report these types of off-centralized-market transactions to the Commission and to the public, or how reporting firms should report them to the Commission. Accordingly, the Commission is proposing to amend its rules to address these issues. Parts 16 and 17 of the Commission's regulations currently require contract markets and reporting firms to separately account for the volume that is attributable to EFPs. The Commission is proposing to require these entities to report other trades involving the exchange of futures for a commodity or transaction other than a futures product in the same manner as they currently report EFP transactions.

Thus, as proposed, contract markets and reporting firms would group together all EFPs, EFSs, EFRs, EFOs or other exchanges of futures for a commodity or transaction other than a futures product permitted by exchange rules, and report the sum under the same category. This is appropriate because all of these trades are similar in that they permit the exchange of a futures position for an off-exchange position. Block trades, however, would not be included in this total because they do not involve the exchange of a futures position for a commodity or transaction other than a futures product. Volume attributable to block trades would be reported with other volume. Although it may be desirable to have block trade volume separately identified and reported, the Commission does not currently believe that the effort required to update its information systems or the effort required by contract markets and reporting firms to update their systems would justify the benefit.

## III. Modernization of Rules Covering Data and Hard Copy Submissions

The Commission's rules currently have requirements for hard copy submission of data and dial-up transmission of data. The rules are being changed to reflect the existing industry practice of using Internet data transmissions in place of dial-up transmissions and the use of exchange websites as a store of daily data in place of hard copy reports. Also, the Commission is proposing to amend its rules to foster innovative means of filing Forms 102 by reporting firms and to eliminate Form 103 for the submission of special call data by large traders.

Part 16 of the Commission's regulations requires reports from contract markets. The Commission is now proposing to eliminate the requirements for daily hard copy clearing member reports to the Commission and daily hard copy submissions of trading volume, exchange of futures, open contracts, delivery notices, option deltas, prices, and critical dates to the Commission or its staff. These hard copy reports would only be required upon request of the Commission or its staff. Also, the Commission is proposing to replace the requirement of providing printed forms of trading volume, exchange of futures, open contracts, delivery notices, and option deltas to the news media and members of the public with a general requirement that such information be made readily available to such persons. The Commission is also proposing to replace explicit requirements for a dial-up form of data transmission with more general requirements for data transmission. Finally, in light of advances in technology, the Commission is proposing to require the submission of clearing member reports and certain data regarding trading volume, open interest, prices and critical dates by 12 p.m. on the business day following the day to which the information pertains. Currently, such information is required to be submitted by 3 p.m. on that day. The Commission believes that the information is currently being submitted within the proposed noon deadline.

In part 17, which governs reports by reporting firms, the Commission is proposing to replace specific requirements pertaining to use of dial-up transmissions, '01 forms and

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[5] Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[6] For instance, section 5(b)(3)(B) of the Act provides that exchange rules may authorize "an exchange of—(i) futures in connection with a cash commodity transaction; (ii) futures for cash commodities; or (iii) futures for swaps * * *." 7 U.S.C. 7(b)(3)(B).

[7] An EFS, EFR, and EFO works similarly to a transaction involving the exchange of futures for physicals (EFP). EFPs allow market participants to exchange a position in a futures contract with a similar cash market position. EFSs allow market participants to exchange a position in a futures contract for a cash-settled swap position. EFRs allow market participants to exchange a position in a futures contract for an over-the-counter derivative position. EFOs allow market participants to exchange a position in a futures contract for an off-exchange options position.

computer printouts with more general data transmission requirements. Furthermore, the Commission is proposing to allow reporting firms to authenticate that a Form 102 is being filed by an authorized individual of a reporting firm on behalf of the reporting firm by a means other than manually signing the form. This signature requirement necessitates the manual filing of Form 102s, and the manual filing of these forms remains one of the costlier aspects of large trader reporting in the industry. In order to foster more innovative and cost efficient means of fulfilling this reporting requirement, including the possibility of electronic filing, the Commission is proposing to permit alternative means of authentication. While a signature will remain the default method of authentication, the Commission will retain the authority to approve other means of authentication as new filing solutions become available and accepted in the industry.

In part 18, which governs reports by traders, the Commission is proposing to eliminate the use of a Form 103 for data requested by the Commission via special calls. The form of the data would now be per instructions contained in the call. This matches current practice.[8] In addition, consistent with the current requirements for daily submission of large trader data, the Commission is proposing to require traders to identify exchanges of futures for a commodity or transaction other than a futures product in response to such a call. The Commission is also proposing to delete Rule 18.02 which provides for the use of code numbers. Such a request has not been made in many years and, if such a request is made in the future, it could be accommodated informally. Finally, the Commission is proposing to delete Rule 18.06 as the referenced technology is no longer in use.

In part 21, which governs special calls, the requirement for machine-readable information adhering to a specific record layout as contained in the rules would be eliminated. The requirement for the information to be prepared in accordance with instructions in the call would remain. This matches current practice.

## IV. Clarifying and Technical Amendments

The Commission has identified a number of other provisions of the large trader rules that either do not reflect current practice or otherwise should be corrected or updated. First, the Commission is proposing to amend Rule 15.00(b)(1)(ii) to clarify that options on physicals are included in the definition of reportable position.[9] Second, the Commission is proposing to amend Rule 17.00(a) to clarify that a reportable position in a commodity in a special account requires that all positions in that same commodity on the same contract market in the special account be reported.[10] Third, the Commission is proposing to amend Rule 17.04 to clarify that options positions are to be included in reports of omnibus accounts. Each of these clarifications reflects current Commission and industry practice.

The Commission is also proposing to amend Rules 16.00(b)(2) and 16.01(d)(2) to provide that the time by which the reports required by those rules must be filed is governed by a particular time zone, unless otherwise specified by the Commission or its designee. The Commission is also proposing certain technical amendments to Rule 17.00(g). Specifically, it is proposing to remove the references to particular exchanges in subsection (2)(v) and to make certain editorial changes in subsections (2)(vi) and (2)(xi). The Commission is also proposing to change the requirement in Rule 17.01 regarding identification of special accounts to contract markets on Form 102.[11] Finally, the Commission is also proposing to correct certain outdated references to the provisions of part 15 that appear in part 19.

## V. Related Matters

### *A. Cost Benefit Analysis*

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) requires the Commission to "consider the cost and benefits" of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed rules impose limited costs in terms of reporting requirements, particularly since most entities that trade on U.S. futures markets already file large trader reports with the Commission. To reduce the cost of reporting for contract markets and reporting firms, the Commission is deleting the requirement of certain routine hard copy reports, updating its submission requirements to reflect current industry practice and fostering innovative means of filing Forms 102. Moreover, to further reduce the cost of reporting, the Commission periodically reviews all reporting levels for all commodities.[12] The countervailing benefits of these costs are that the Commission will have the necessary information to perform its market surveillance function and thus carry out its mandate of ensuring the continued existence of competitive and efficient markets, protecting their price discovery function and protecting market participants and the public interest therein.

After considering these factors, the Commission has determined to propose the revisions to parts 15 through 19, and part 21, as set forth below.

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[8] The Commission is also proposing a conforming change to Rule 15.02 to remove Form 103 from the list of forms to be used in filing reports.

[9] Prior to 1997, the definition of a reportable position explicitly referenced options on physicals. 17 CFR 15.00(b)(2) (1996). When the Commission amended that definition in 1997, that reference was deleted. 62 FR 24026 (May 2, 1997). The Commission believes that this deletion was unintentional as no explanation was provided at the time. *Id. See also* 61 FR 37409 (July 18, 1996). Furthermore, both the Commission and the industry have continued to include options on physicals in the large trader and other reports filed under parts 15 through 21. *See* 17 CFR 16.00(a), 16.01(a), 21.02a(b)(4)(vii). Accordingly, the Commission believes that it is appropriate at this time to amend the definition of reportable position to clarify that it includes options on physicals, both to correct what appears to have been an unintentional limitation of the definition in 1997 and to align the definition with current Commission and industry reporting practices.

[10] The part 17 rules were changed in 1997 to reflect this requirement. *See* 62 FR 24026, 24028 n. 7 (May 2, 1997). In practice, however, it appears that further clarification would be helpful.

[11] This change is consistent with earlier changes made to the Commission's rules (*see* 62 FR 24026 (May 2, 1997)) and does not relieve reporting firms of their obligations to comply with any applicable exchange requirements regarding the submission of Form 102s to the exchanges.

[12] *See, e.g.*, 65 FR 14452 (Mar. 17, 2000).

The Commission specifically invites public comment on its application of the criteria contained in section 15(a) of the Act for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rule with their comment letters.

*B. The Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The Commission has previously determined that contract markets, futures commission merchants and large traders are not "small entities" for purposes of the RFA.[13] The requirements of the proposed amendments fall mainly on contract markets and FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large, positions. In addition, these proposed amendments relieve a regulatory burden. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

*C. The Paperwork Reduction Act*

When publicizing proposed rules, the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission through these proposed rules solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission responses.

The Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burdens associated with this entire collection (3038–0009), including these proposed rules, is as follows:

Average Burden Hours Per Response: .29.
Number of Respondents: 2,950.
Frequency of Response: Daily.

Persons wishing to comment on the information which would be required by these proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, 202–395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, 202–418–5160.

Copies of the OMB-approved information collection package associated with the rulemaking may be obtained from the Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, 202–395–7340.

**List of Subjects**

*17 CFR Part 15*

Brokers, Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 16*

Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 17*

Brokers, Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 18*

Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 19*

Commodity futures, Cotton, Grains, Reporting and recordkeeping requirements.

*17 CFR Part 21*

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 4g, 4i, 5 and 8a of the Act, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19 and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000); 5 U.S.C. 552 and 552(b).

2. In § 15.00, revise paragraph (b)(1)(ii) to read as follows:

**§ 15.00 Definitions of terms used in parts 15 to 21 of this chapter.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(ii) Long or short put or call options that exercise into the same future of any commodity, or for options on physicals that have identical expirations and exercise into the same physical, on any one contract market.

* * * * *

3. Revise § 15.02 to read as follows:

**§ 15.02 Reporting forms.**

Forms on which to report may be obtained from any office of the Commission or via the Internet (*http://www.cftc.gov*). Forms to be used for the filing of reports follow, and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

| Form No. | Title | Rule |
|---|---|---|
| 40 | Statement of Reporting Trader | 18.04 |
| '01 | Positions of Special Accounts | 17.00 |
| 102 | Identification of Special Accounts | 17.01 |
| 204 | Cash Positions of Grain Traders (including Oilseeds and Products) | 19.00 |
| 304 | Cash Positions of Cotton Traders | 19.00 |

[13] 47 FR 18618–18621 (April 30, 1982).

4. Revise § 15.03 to read as follows:

**§ 15.03 Reporting levels.**

(a) *Definitions.* For purposes of this section:

*Broad-based security index* is a group or index of securities that does not constitute a narrow-based security index.

*HedgeStreet economic index products* mean European-style binary options that are based on economic indexes, that pay a fixed $10.00 if in the money upon expiration and that are offered by HedgeStreet, Inc., a designated contract market.

*Major foreign currency* means the currencies and cross-rates between the currencies of Japan, the United Kingdom, Canada, Australia, Switzerland, Sweden and the European Monetary Union.

*Narrow-based security index* has the same meaning as in section 1a(25) of the Commodity Exchange Act.

*Security futures product* has the same meaning as in section 1a(32) of the Commodity Exchange Act.

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

| Commodity | Number of contracts |
|---|---|
| Agricultural: | |
| Wheat | 150 |
| Corn | 250 |
| Oats | 60 |
| Soybeans | 150 |
| Soybean Oil | 200 |
| Soybean Meal | 200 |
| Cotton | 100 |
| Frozen Concentrated Orange Juice | 50 |
| Milk, Class III | 50 |
| Rough Rice | 50 |
| Live Cattle | 100 |
| Feeder Cattle | 50 |
| Lean Hogs | 100 |
| Sugar No. 11 | 500 |
| Sugar No. 14 | 100 |
| Cocoa | 100 |
| Coffee | 50 |
| Natural Resources: | |
| Copper | 100 |
| Gold | 200 |
| Silver Bullion | 150 |
| Platinum | 50 |
| No. 2 Heating Oil | 250 |
| Crude Oil, Sweet | 350 |
| Unleaded Gasoline | 150 |
| Natural Gas | 200 |
| Crude Oil, Sweet—No. 2 Heating Oil Crack Spread | 250 |
| Crude Oil, Sweet—Unleaded Gasoline Crack Spread | 150 |
| Unleaded Gasoline—No. 2 Heating Oil Spread Swap | 150 |
| Financial: | |
| 3-month (13-Week) U.S. Treasury Bills | 150 |
| 30-Year U.S. Treasury Bonds | 1,500 |
| 10-Year U.S. Treasury Notes | 2,000 |
| 5-Year U.S. Treasury Notes | 2,000 |
| 2-Year U.S. Treasury Notes | 1,000 |
| 10-Year German Federal Government Debt | 1,000 |
| 5-Year German Federal Government Debt | 800 |
| 2-Year German Federal Government Debt | 500 |
| 3-Month Eurodollar Time Deposit Rates | 3,000 |
| 30-Day Fed Funds | 600 |
| 1-month LIBOR Rates | 600 |
| 3-month Euroyen | 100 |
| Major-Foreign Currencies | 400 |
| Other Foreign Currencies | 100 |
| U.S. Dollar Index | 50 |
| Goldman Sachs Commodity Index | 100 |
| Broad-Based Security Indices: | |
| S&P 500 Stock Price Index | 1,000 |
| Municipal Bond Index | 300 |
| Other Broad-Based Security Indices | 200 |
| Security Futures Products: | |
| Individual Equity Security | 1,000 |
| Narrow-Based Security Index | 200 |
| TRAKRS | [1] 50,000 |
| HedgeStreet Economic Index Products | [1] 125,000 |
| All Other Commodities | 25 |

[1] For purposes of part 17, positions in TRAKRS and HedgeStreet Economic Index Products should both be reported by rounding down to the nearest 1000 and dividing by 1000.

## PART 16—REPORTS BY CONTRACT MARKETS

5. The authority citation for part 16 continues to read as follows:

**Authority:** 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12a, unless otherwise noted.

6. In § 16.00, revise paragraphs (a)(4) and (b) to read as follows:

**§ 16.00 Clearing member reports.**

(a) * * *

(4) The quantity of purchases of futures in connection with a commodity or transaction other than a futures product and the quantity of sales of futures in connection with a commodity or transaction other than a futures product which are included in the total quantity of contracts bought and sold during the day covered by the report, and the names of the clearing members who made the purchases or sales;

* * * * *

(b) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) as follows:

(1) Using a format, coding structure, and electronic data transmission procedures approved in writing by the Commission or its designee; *provided however,* the information shall be made available to the Commission or its designee in hard copy upon request; and

(2) When such data is first available but not later than 12 p.m. on the business day following the day to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

* * * * *

7. In § 16.01, delete the phrase ", in printed form at the office of the contract market," from paragraph (b)(3), and revise paragraph (a)(2), the concluding text of paragraph (a), and paragraph (d) to read as follows:

**§ 16.01 Trading volume, open contracts, prices, and critical dates.**

* * * * *

(a) * * *

(2) The total quantity of futures for a commodity or transaction other than a futures product which are included in the total volume of trading;

(5) * * *

This information shall be made readily available to the news media and the general public without charge no later than the business day following the day for which publication is made.

(b) * * *

* * * * *

(d) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit to the Commission the information specified in paragraphs (a), (b) and (c) of this section as follows:

(1) Using a format, coding structure and electronic data transmission procedures approved in writing by the Commission or its designee; *provided however,* the information shall be made available to the Commission or its designee in hard copy upon request; and

(2) When each such form of the data is first available but not later than 7 a.m. on the business day following the day to which the information pertains for the delta factor and settlement price and not later than 12 p.m. for the remainder of the information. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets

located in that time zone, and central time for information concerning all other markets.

* * * * *

8. Revise § 16.06 to read as follows:

**§ 16.06 Errors or omissions.**

Unless otherwise approved by the Commission or its designee, contract markets shall file corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00 and 16.01 in the format and using the coding structure and electronic data submission procedures approved in writing by the Commission or its designee.

9. In § 16.07, revise paragraphs (a) and (b) to read as follows:

**§ 16.07 Delegation of authority to the Director of the Division of Market Oversight and the Executive Director.**

* * * * *

(a) Pursuant to §§ 16.00(b) and 16.01(d), the authority to determine whether contract markets must submit data in hard copy, and the time that such data may be submitted where the Director determines that a contract market is unable to meet the requirements set forth in the regulations;

(b) Pursuant to §§ 16.00(b)(1), 16.00(d)(1), and 16.06, the authority to approve the format, coding structure and electronic data transmission procedures used by contract markets.

## PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

10. The authority citation for part 17 continues to read as follows:

**Authority:** 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a, unless otherwise noted.

11. In § 17.00, revise paragraph (a), add paragraph (a)(1), and revise paragraphs (g)(2)(i), (g)(2)(v), (g)(2)(vi), (g)(2)(xi), and (h) to read as follows:

**§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.**

(a) *Special Accounts—Reportable futures and options positions, delivery notices, and exchanges of futures.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made in accordance with the format, coding and data transmission procedures set forth in paragraph (g) of this section. The report shall show each futures position, separately for each contract market and for each future, and each put and call options position separately for each contract market, expiration and strike price in each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for a commodity or transaction other than a futures product and the number of delivery notices issued for each such account by the clearing organization of a contract market and the number stopped by the account. The report shall also show all positions in all futures months and option expirations of that same commodity on the same contract market for which the special account is reportable.

* * * * *

(g) * * *

(2) * * *

(i) *Report Type.* This report format will be used to report three types of data: long and short futures and options positions, futures delivery notices issued and stopped, and exchanges of futures for a commodity or transaction other than a futures product bought and sold. Valid values for the report type are "RP" for reporting positions, "DN" for reporting notices, and "EP" for reporting exchanges of futures for a commodity or transaction other than a futures product.

* * * * *

(v) *Exchange.* This is a two-character field approved by the Commission to identify the exchange on which a position is held.

(vi) *Put or Call.* Valid values for this field are "C" for a call option and "P" for a put option. For futures, the field is blank.

* * * * *

(xi) *Long-Buy-Stopped (Short-Sell-Issued).* When report type is "RP", report long (short) positions open at the end of a trading day. When report is "DN", report delivery notices stopped (issued) on behalf of the account. When report type is "EP", report purchases (sales) of futures for a commodity or product other than a futures product for the account. Report all information in contracts. Position data are reported on a net or gross basis in accordance with paragraphs (d) and (e) of this section.

* * * * *

(h) *Correction of errors and omissions.* Unless otherwise approved by the Commission or its designee, corrections to errors and omissions in data provided pursuant to § 17.00(a) shall be filed on series '01 forms or in the format, coding structure and data transmission procedures approved in writing by the Commission or its designee.

* * * * *

12. In § 17.01, revise the introductory text and paragraph (f) to read as follows:

**§ 17.01 Special account designation and identification.**

When a special account is reported for the first time, the FCM, clearing member, or foreign broker shall identify the account to the Commission on form 102, in the form and manner specified in § 17.02, showing the information in paragraphs (a) through (f) of this section.

* * * * *

(f) *Reporting firms.* The name and address of the FCM, clearing member, or foreign broker carrying the account, the name, title and business phone of the authorized representative of the firm filing the form 102 and the date of the form 102. The authorized representative shall sign the report or satisfy such other requirements for authenticating the report as instructed in writing by the Commission or its designee.

* * * * *

13. Revise § 17.02 to read as follows:

**§ 17.02 Form, manner and time of filing reports.**

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by FCMs, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed as specified in paragraphs (a) and (b) of this section.

(a) *Section 17.00(a) reports.* Reports filed under § 17.00(a) shall be submitted through electronic data transmission procedures approved in writing by the Commission or its designee not later than 9 a.m. on the business day following that to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(b) *Section 17.01 reports.* For data submitted pursuant to § 17.01 on form 102:

(1) On call by the Commission or its designee, identify the type of special account specified by items 1(a), 1(b), or 1(c) of form 102, and the name and location of the person to be identified in item 1(d) on the form 102, and submit such information by facsimile or telephone, in accordance with instructions by the Commission or its

designee, on the same day that the special account in question is first reported to the Commission; and

(2) Submit a completed form 102 within three business days of the first day that the special account in question is reported to the Commission in accordance with instructions by the Commission or its designee.

14. In § 17.03, revise paragraphs (a) and (b), redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

**§ 17.03 Delegation of authority to the Director of the Division of Market Oversight and to the Executive Director.**

* * * * *

(a) Pursuant to § 17.00(a) and (h), the authority to determine whether futures commission merchants, clearing members and foreign brokers can report the information required under Rule 17.00(a) and Rule 17.00(h) on series '01 forms or using some other format upon a determination that such person is unable to report the information using the format, coding structure or electronic data transmission procedures otherwise required.

(b) Pursuant to § 17.02, the authority to instruct and/or approve the time at which the information required under Rules 17.00 and 17.01 must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in § 17.01.

(c) Pursuant to § 17.01(f), the authority to determine whether to permit an authorized representative of a firm filing the form 102 to use a means of authenticating the report other than by signing the form 102 and, if so, to determine the alternative means of authentication that shall be used.

* * * * *

15. In § 17.04, revise the second sentence of paragraph (b) and paragraphs (b)(1)(i) and (b)(2) to read as follows:

**§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.**

* * * * *

(b) * * * The futures commission merchant, clearing members or foreign broker shall, if both open long and short positions in the same future or option are carried for the same trader, compute open long or open short positions as instructed in this paragraph.

(1) * * *

(i) The positions represent transactions on a contract market which requires long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis; or

* * * * *

(2) Include only the net long or net short positions of the trader if the positions represent transactions on a contract market which does not require long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis.

* * * * *

## PART 18—REPORTS BY TRADERS

16. The authority citation for part 18 continues to read as follows:

**Authority:** 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b), unless otherwise noted.

17. Revise § 18.00 to read as follows:

**§ 18.00 Information to be furnished by traders.**

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position in a commodity shall within one business day after a special call upon such trader by the Commission or its designee file reports to the Commission concerning transactions and positions in such futures or options. Reports shall be filed for a period of time that the trader held or controlled a reportable position and shall be prepared and submitted as instructed in the call. The report shall show for each day covered by the report the following information, as specified in the call, separately for each future or option and for each contract market:

(a) Open contracts;

(b) Purchases and sales;

(c) Delivery notices issued and stopped;

(d) Exchanges of futures for a commodity or transaction other than a futures product bought and sold; and

(e) Options exercised.

**§ 18.02 [Removed and Reserved]**

18. Remove and reserve § 18.02.

**§ 18.06 [Removed and Reserved]**

19. Remove and reserve § 18.06.

## PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

20. The authority citation for part 19 continues to read as follows:

**Authority:** 7 U.S.C. 6(g)(a), 6(i) and 12a(5), unless otherwise noted.

21. In § 19.00, revise paragraph (a)(1) and the first sentence of paragraph (a)(3) to read as follows:

**§ 19.00 General provisions.**

(a) * * *

(1) All persons holding or controlling futures and option positions that are reportable pursuant to § 15.00(b)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter;

* * * * *

(3) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(b)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. * * *

* * * * *

## PART 21—SPECIAL CALLS

22. The authority citation for part 21 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b), unless otherwise noted.

**§ 21.02a [Removed]**

23. Remove § 21.02a.

Issued in Washington, DC, on May 5, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04–10647 Filed 5–11–04; 8:45 am]

BILLING CODE 6351–01–P

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 948

**[WV–102–FOR]**

### West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia proposes revisions to the Code of State Regulations (CSR) as authorized by Committee Substitute for House Bill 4193. The State is revising its program to be consistent with certain corresponding Federal requirements, and to include other amendments at its own initiative. The amendments include, among other things, new

provisions to ensure reclamation and husbandry techniques that are conducive to the development of productive forestlands and wildlife habitat after mining.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on June 11, 2004. If requested, we will hold a public hearing on the amendment on June 7, 2004. We will accept requests to speak at a hearing until 4 p.m. (local time), on May 27, 2004.

**ADDRESSES:** You should mail, e-mail, or hand-deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510.

In addition, you may review a copy of the amendment during regular business hours at the following locations: Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only); Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. Internet: *chfo@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**



## I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

## II. Description of the Proposed Amendment

By letter dated March 25, 2004 (Administrative Record Number WV–1389), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of Committee Substitute for House Bill 4193, which authorizes amendments to the West Virginia Surface Mining Reclamation Rules at CSR 38–2. Committee Substitute for House Bill 4193 passed the Legislature on March 12, 2004, and was signed by the Governor on April 5, 2004. West Virginia Code (W.Va. Code or WV Code) 64–3–1(g) specifically authorizes WVDEP to promulgate the revisions as legislative rules.

In its letter, the WVDEP stated that the rules at CSR 38–2 were amended to be consistent with the counterpart Federal regulations. In addition, the amendment adds new provisions concerning "Forestland" and "Wildlife" to ensure reclamation techniques and husbandry that are conducive to productive forestlands and wildlife habitats are followed. The WVDEP also included in its submittal, a memorandum from the West Virginia State Forester in which the State Forester endorsed the proposed rules and also provided comments on them.

The WVDEP also submitted Committee Substitute for Senate Bill 616, which was adopted by the Legislature on March 21, 2004. The Bill increased the membership of the Environmental Protection Advisory Council and established a new Quality Assurance Compliance Advisory Committee. Because this Bill was vetoed by the Governor on April 6, 2004, it is not being considered in this rulemaking.

The amendment submitted by WVDEP includes amendments to CSR 38–2–24 concerning the exemption for coal extraction incidental to the removal of other minerals. However, none of these provisions at CSR 38–2–24, which the State is proposing to amend, have been previously submitted to OSM for approval. Therefore, we are including CSR 38–2–24 (Administrative Record Number WV–1390) in its entirety, and we are requesting public comment on all of Section 24 (Item 10, below).

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specifically, West Virginia proposes the following amendments.

*1. CSR 38–2–3.12.a.1. Subsidence Control Plan*

This provision is amended by changing a term related to the scale of the topographic map that must be submitted with the subsidence control plan. In the first sentence, the word "less" is deleted and replaced by the word "more." In the last sentence, the word "less" is deleted and replaced by the word "larger."

*2. CSR 38–2–7.6. Forest Land*

This subsection is new and provides as follows.

7.6 Forest Land

7.6.a. The Secretary may authorize forest land as a postmining land use only if the following conditions have been met: Provided, however; this subsection only applies to AOC mining operations that propose to utilize auger, area, mountain top and contour methods of mining. Proposed underground mining, coal preparation facilities, coal refuse disposal, haulroads and their related incidental facilities are not subject to the provisions of this subsection but must comply with all other applicable sections of this rule.

7.6.b. Planting Plan

7.6.b.1. A. West Virginia registered professional forester shall develop a planting plan for the permitted area that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. This plan shall be made a part of the mining permit application. The plans shall be in sufficient detail to demonstrate that the requirements of forestland use can be met. The minimum contents of the plan shall be as follows:

7.6.b.1.A.1. A premining native soils map and brief description of each soil mapping unit to include at a minimum: Areal extent expressed in acres, total depth and volume to bedrock, soil horizons, including the O, A, E, B, and C horizon depths, soil texture, structure, color, reaction, bedrock type, and

a site index for northern red oak. A site index for white oak for each soil mapping unit should also be provided if available. A weighted, average site index for northern red oak, based on acreage per soil mapping unit, shall be provided for the permitted area.

7.6.b.1.A.2. A surface preparation plan that includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for seeding and tree planting.

7.6.b.1.A.3. Liming and fertilizer plans.

7.6.b.1.A.4. Mulching type, rates and procedures.

7.6.b.1.A.5. Species seeding rates and procedures for application of perennial and annual herbaceous, shrub and vine plant materials for ground cover.

7.6.b.1.A.6. A site specific tree planting prescription to establish forestland to include species, stems per acre and planting mixes.

7.6.b.1.B. Review of the Planting plan.

7.[6.]b.1.B.1. Before approving a forestland postmining land use, the Secretary shall assure that the planting plan is reviewed and approved by a forester employed [by] the Department of Environmental Protection. Before approving the planting plan, the Secretary shall assure that the reviewing forester has made site-specific written findings adequately addressing each of the elements of the plans. The reviewing forester shall make these findings within 45 days of receipt of the plans.

7.6.b.1.B.2. If after reviewing the planting plan, the reviewing forester finds that the plan complies with the requirements of this section, they shall prepare written findings stating the basis of approval. A copy of the findings shall be sent to Secretary and shall be made part of the Facts and Findings section of the permit application file.

The Secretary shall ensure that the plans comply with the requirements of this rule and other provisions of the approved State surface mining program.

7.6.b.1.B.3. If the reviewing forester finds the plans to be insufficient, the forester shall either:

7.6.b.1.B.3.(a). Contact the preparing forester and the permittee and provide the permittee with an opportunity to make the changes necessary to bring the planting plan into compliance; or,

7.6.b.1.B.3.(b). Notify the Secretary that the planting plan does not meet the requirements of this rule. The Secretary may not approve the surface mining permit until finding that the planting plans satisfy all of the requirements of this rule.

7.6.c. Soil placement, Substitute material and Grading

7.6.c.1. Except for valley fill faces, soil or soil substitutes shall be redistributed in a uniform thickness of at least four feet across the mine area.

7.6.c.2. The use of topsoil substitutes may be approved by the Secretary providing the applicant demonstrates: the volume of topsoil on the permit area is insufficient to meet the depth requirements of 7.6.c.1, the substitute material consists of at least 75% sandstone, has a composite paste pH between 5.0 and 7.5, has a soluble salt level of less than 1.0 mmhos/cm. and is in accordance with 14.3.c. The Secretary may allow substitute materials with less than 75% sandstone provided the applicant demonstrates the overburden in the mine area does not contain an adequate volume of sandstone to meet the depth requirements of 7.6.c.1, or the quality of sandstone in the overburden does not meet the requirements of this rule. This information shall be made a part of the permit application.

7.6.c.3. Soil shall be placed in a loose and non-compacted manner while achieving a static safety factor of 1.3 or greater. Grading and tracking shall be minimized to reduce compaction. Final grading and tracking shall be prohibited on all areas that are equal to or less than a 30 percent slope. Organic debris such as forest litter, tree tops, roots, and root balls may be left on and in the soil.

7.6.c.4. The permittee may regrade and reseed only those rills and gullies that are unstable and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

7.6.d. Liming and Fertilizing

7.6.d.1. Lime shall be required where the average soil pH is less than 5.0. Lime rates will be used to achieve a uniform soil pH of 5.5. Soil pH may vary from 5.0 to a maximum of 7.5. An alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetation species.

7.6.d.2. The Secretary shall require the permittee to fertilize based upon the needs of trees and establishment of ground cover to control surface soil erosion. Between 200 and 300 lbs./acre of 10–20–10 fertilizer shall be applied with the ground cover seeding. Other fertilizer materials and rates may be used only if the Secretary finds that the substitutions are appropriate based on soil testing performed by State certified laboratories.

7.6.e. Revegetation

7.6.e.1. Temporary erosion control vegetative cover shall be established as contemporaneously as practical with backfilling and grading until a permanent tree cover can be established. This cover shall consist of a combination of native and domesticated non-competitive and non-invasive cool and warm species grasses and other herbaceous vine or shrub species including legume species and shrubs. All species shall be slow growing and compatible with tree establishment and growth. The ground vegetation shall be capable of stabilizing the soil from excessive erosion, but the species should be slow growing and non-invasive to allow the establishment and growth of native herbaceous plants and trees. Seeding rates and composition must be in the planting plan. The following ground cover mix and seeding rates (lb./acre) are strongly recommended: winter wheat or oats (10 lbs./acre), fall seeding, foxtail millet (5 lbs./acre), summer seeding, weeping lovegrass (3 lbs./acre or redtop at 5 lbs./acre), kobe lespedeza (5 lbs./acre), birdsfoot trefoil (10lbs./acre), perennial rye grass (10 lbs./acre) and white clover (3 lbs./acres). Kentucky 31 fescue, serecia lespedeza, all vetches, clovers (except ladino and white clover) and other aggressive or invasive species shall not be used. Alternate seeding rates and composition will be considered on a case by case basis by the Secretary and may be approved if site specific conditions necessitate a deviation from the above. All mixes shall be compatible with the plant and animal species of the region and forestland use.

7.6.e.2. The selection of trees and shrubs species shall be based [on] each species' site requirements (soil type, degree of compaction, ground cover, competition, topographic position and aspect) and in accordance with the approved planting plan prepared by a registered professional forester. The stocking density of woody plants shall be at least 500 plants per acre.

7.6.e.2.A. The stocking density for trees shall be at least 350 plants per acre. There shall be a minimum of five species of trees, to include at least three higher value hardwood species (white oak, northern red oak, black oak, chestnut oak, white ash, sugar maple, black cherry and yellow poplar) and at least two lower value hardwoods or softwoods species (all hickories, red maple, basswood, cucumber magnolia, sycamore, white pine, Virginia pine and pitch × loblolly hybrid pine). There shall be at least 210 high value hardwoods plants per acre and 140 lower value hardwood or softwood plants per acre (70 plants per acre for each species selected).

7.6.e.2.B. The stocking density of shrubs and other woody plants shall not exceed 150 plants per acre. There shall be a minimum of three species of shrubs or other woody plants (black locust, bristly locust, dogwood, Eastern redbud, black alder, bigtooth aspen and bicolor lespedeza, (50 plants per acre for each species selected).

7.6.f. Standards for Success

7.6.f.1. The success of vegetation shall be determined on the basis of tree and shrub survival and ground cover.

7.6.f.2. Minimum success standard shall be tree survival (including volunteer tree species) and/or planted shrubs per acre equal to or greater than four hundred and fifty (450) trees per acre and a seventy percent (70%) ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter during the growing season of the last year of the responsibility period; and

7.6.f.3. At the time of final bond release, at least eighty (80) percent of all trees and shrubs used to determine such success must have been in place for at least sixty (60) percent of the applicable minimum period of responsibility. Trees and shrubs counted in determining such success shall be healthy and shall have been in place for not less than two (2) growing seasons.

*3. CSR 38–2–7.7. Wildlife*

This subsection is new and provides as follows.

7.7. Wildlife

7.7.a. The Secretary may authorize wildlife as a postmining land use only if the following conditions have been met. This subsection applies to all AOC mining operations that propose a postmining land use of wildlife. The Secretary shall ensure that the plans comply with the requirements of this rule and other provisions of the approved State surface mining program.

7.7.b. Planting Plan

7.7.b.1. A wildlife biologist employed by the West Virginia Division of Natural Resources shall develop a planting plan for the permitted area that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act. This plan shall be made a part of the mining permit application. The plans shall be in sufficient detail to demonstrate that the requirements of wildlife use can be met. The minimum contents of the plan shall be as follows:

7.7.b.1.A.1. Surface preparation plan that includes a description of the methods for replacing and grading the soil and other soil substitutes and their preparation for seeding and planting.

7.7.b.1.A.2. Liming and fertilizer plans.

7.7.b.1.A.3. Mulching type, rates and procedures.

7.7.b.1.A.4. Species seeding rates and procedures for application of perennial and annual herbaceous, shrub and vine plant materials for ground cover.

7.7.b.1.A.5. A site specific tree/shrub planting prescription to establish wildlife to include species, stems per acre and planting mixes.

7.7.c. Soil placement, Substitute material and Grading

7.7.c.1. Except for valley fill faces, soil or soil substitutes shall be redistributed in a uniform thickness of at least four feet across the mine area.

7.7.c.2. The use of topsoil substitutes may be approved by the Secretary providing the applicant demonstrates: the volume of topsoil on the permit area is insufficient to meet the depth requirements of 7.6.c.1, the substitute material consists of at least 75% sandstone, has a composite paste pH between 5.0 and 7.5, has a soluble salt level of less than 1.0 mmhos/cm. and is in accordance with 14.3.c. The Secretary may allow substitute materials with less than 75% sandstone provided the applicant demonstrates the overburden in the mine area does not contain an adequate volume of sandstone to meet the depth requirements of 7.6.c.1, or the quality of sandstone in the overburden does not meet the requirements of this rule. Such information shall be made a part of the permit application.

7.7.c.3. Soil shall be placed in a loose and non-compacted manner while achieving a static safety factor of 1.3 or greater. Grading and tracking shall be minimized to reduce compaction. Final grading and tracking shall be prohibited on all areas that are equal to or less than a 30 percent slope. Organic debris such as forest litter, tree tops, roots, and root balls may be left on and in the soil.

7.7.c.4. The permittee may regrade and reseed only those rills and gullies that are unstable and/or disrupt the approved postmining land use or the establishment of vegetative cover or cause or contribute to a violation of water quality standards for the receiving stream.

7.7.d. Liming and Fertilizing

7.7.d.1. Lime shall be required where the average soil pH is less than 5.0. Lime rates will be used to achieve a uniform soil pH of 5.5. Soil pH may vary from 5.0 to a maximum of 7.5. An alternate maximum or minimum soil pH may be approved based on the optimum pH for the revegetation species.

7.7.d.2. The Secretary shall require the permittee to fertilize based upon the needs of trees and establishment of ground cover to control surface soil erosion. A minimum of 300 lbs./acre of 10–20–10 fertilizer shall be applied with the ground cover seeding. Other fertilizer materials and rates may be used only if the Secretary finds that the substitutions are appropriate based on soil testing performed by State certified laboratories.

7.7.e. Revegetation

7.7.e.1. Temporary erosion control vegetative cover shall be established as contemporaneously as practical with backfilling and grading until a permanent tree cover can be established. This cover shall consist of a combination of native and domesticated non-competitive and non-invasive cool and warm species grasses and other herbaceous vine or shrub species including legume species and shrubs. All species shall be slow growing and compatible with tree establishment and growth. The ground vegetation shall be capable of stabilizing the soil from excessive erosion, but the species should be slow growing and non-invasive to allow the establishment and growth of native herbaceous plants and trees. Seeding rates and composition must be in the planting plan. The following ground cover mix and seeding rates (lb./acre) are strongly recommended: Winter wheat (20 lbs./acre), fall seeding, foxtail millet (10 lbs./acre), summer seeding, weeping lovegrass (3 lbs./acre or redtop at 5 lbs./acre), kobe lespedeza (5 lbs./acre), birdsfoot trefoil (15 lbs./acre), perennial rye grass (10 lbs./acre) and white clover (4 lbs./acre). Kentucky 31 fescue, serecia lespedeza, all vetches, clovers (except ladino and white clover) and other aggressive or invasive species shall not be used. Alternate seeding rates and composition will be considered on a case by case basis by the Secretary and may be approved if site specific conditions necessitate a deviation from the above. Areas designated, as openings shall contain only grasses in accordance with the approved planting plan specified under subsection 7.7.b. of this rule.

7.7.e.2. The selection of trees and shrubs species shall be based [on] each species' site requirements (soil type, degree of compaction, ground cover, competition, topographic position and aspect) and in accordance with the approved planting plan specified in under subsection 7.7.b. of this rule. The stocking density of woody plants shall be at least 500 plants per acre. Provided, that where a wildlife planting plan has been approved by a professional wildlife biologist and proposes a stocking rate of less than four hundred fifty (450) trees or shrubs per acre the standard for grasses and legumes shall meet those standards contained in subdivision 9.3.f of this rule. In all instances, there shall be a minimum of four species of tree or shrub, to include at least two hard mast producing species.

7.7.f. Standards for Success

7.7.f.1. The success of vegetation shall be determined on the basis of tree and shrub survival and ground cover.

7.7.f.2. Minimum success standard shall be tree survival (including volunteer tree species) and/or planted shrubs per acre equal to or greater than four hundred and fifty (450) trees per acre and a seventy percent (70%) ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter during the growing season of the last year of the responsibility period; Provided, that where a wildlife planting plan has been approved by a professional wildlife biologist and proposes a stocking rate of less than four hundred fifty (450) trees or shrubs per acre the standard for grasses and legumes shall meet those standards contained in subdivision 9.3.f of this rule.

7.7.f.3. At the time of final bond release, at least eighty (80) percent of all trees and shrubs used to determine such success must have been in place for at least sixty (60) percent of the applicable minimum period of responsibility. Trees and shrubs counted in determining such success shall be healthy and shall have been in place for not less than two (2) growing seasons.

*4. CSR 38–2–9.3.g. Revegetation Standards for Areas To Be Developed for Forest Land and/or Wildlife Use*

This provision is amended by adding a sentence in the second paragraph that provides as follows:

A professional wildlife biologist employed by the West Virginia Division of Natural Resources shall develop a planting plan that meets the requirements of the West Virginia Surface Coal Mining and Reclamation Act.

*5. CSR 38–2–14.15.a.1. Contemporaneous Reclamation Standards; General*

The first sentence of this paragraph is amended by deleting the partial citation "(c)(2)," and adding the words "and this rule" immediately following the amended citation. As amended, the sentence provides as follows:

14.15.a.1. Spoil returned to the mined-out area shall be backfilled and graded to the approximate original contour unless a waiver is granted pursuant to W. Va. Code 22–3–13 and this rule with all highwalls eliminated.

*6. CSR 38–2–14.15.g. Variance—Permit Applications*

This paragraph is amended by adding a sentence, which provides as follows:

Furthermore, the amount of bond for the operation shall be based on the maximum amount per acre specified in WV Code 22–3–12(b)(1).

In our December 3, 2002, **Federal Register** notice, we deferred rendering a decision on an earlier attempt by WVDEP to delete this language, given the possible adverse effect that its deletion could have on the State's alternative bonding system. The State's reinstatement of the deleted language is in response to that decision (67 FR 71837).

*7. CSR 38–2–20.1.a.6. Inspection Frequencies Where Permits Have Been Revoked*

This provision is new and provides as follows.

20.1.a.6. When a permit has been revoked, in lieu of the inspection frequency established in paragraphs 20.1.a.1 and 20.1.a.2 of this subsection, the Secretary shall inspect each revoked site on a set frequency commensurate with the public health and safety and environmental consideration present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year. In selecting an alternate inspection frequency, the Secretary shall first conduct a complete inspection of the site and provide public notice. The Secretary shall place a notice in the newspaper with the broadest circulation in the locality of the revoked mine site providing the public with a 30-day period in which to submit written comments. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of [the] Department of Environmental Protection Office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period. Following the inspection and public notice, the Secretary shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

20.1.a.6.A. Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

20.1.a.6.B. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

20.1.a.6.C. The degree to which erosion and sediment control is present and functioning;

20.1.a.6.D. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

20.1.a.6.E. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

20.1.a.6.F. Based on a review of the complete and partial inspection report record for the site during at least two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

*8. CSR 38–2–22.5.a. Coal Refuse Performance Standards—Controlled Placement*

This provision is amended in the second sentence by adding the words "hauled or conveyed and" immediately following the words "mine refuse shall be." As amended, the sentence provides that coal mine refuse shall be hauled or conveyed and placed in a controlled manner to comply with the performance standards at CSR 38–2–22.5.a.1. through 22.5.a.5.

*9. CSR 38–2–23. Special Authorization for Coal Extraction as an Incidental Part of Development of Land for Commercial, Residential, Industrial, or Civic Use*

This section is deleted in its entirety. The remaining sections are renumbered accordingly.

This revision by the State is in response to our disapproval of Section 23 as discussed in the May 5, 2000, and March 4, 2003, **Federal Register** notices and as required by 30 CFR 948.16(oooo) (65 FR 26133 and 68 FR 10719).

*10. CSR 38–2–24. Exemption for Coal Extraction Incidental to Extraction of Other Minerals*

This section is new and provides as follows.

24.1. Exemption determination. The term other minerals as used in this section means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material. No later than 90 days after filing of an administratively complete request for exemption, the Secretary shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this section, and shall notify the person making the request and persons submitting comments on the application of the determination and the basis for the determination. The determination of exemption shall be based upon information contained in the request and any other information available to the regulatory authority at that time. If the Secretary fails to provide a determination as specified in this section, an applicant who has not begun extraction may commence pending a determination unless the Secretary issues an interim finding, together with reasons, therefore, that the applicant may not begin coal extraction. Any person adversely affected by a determination of the Secretary pursuant to this section may file an appeal only in accordance with the provisions of article one, chapter twenty-two-b of this code, within thirty days after receipt of the determination. The filing of an appeal does not suspend the effect of the determination.

24.2. Contents of request for exemption. A request for exemption shall be made part of a quarrying application and shall include at a minimum:

24.2.a. The names and business address of the requestor to include a street address or route number;

24.2.b. A list of the minerals to be extracted;

24.2.c. Estimates of annual production of coal and the other minerals over the anticipated life of the operation;

24.2.d. A reasonable estimate of the number of acres of coal that will be extracted;

24.2.e. Evidence of publication of a public notice for an application for exemption. The notice that an application for exemption has been filed with the Secretary shall be published in a newspaper of general circulation in the county in which the operation is located and shall be published once and provide a thirty day comment period. The public notice must contain at a minimum:

24.2.e.1. The quarrying number identifying the operation;

24.2.e.2. A clear and accurate location map of a scale and detail found in the West Virginia General Highway Map. The map size will be at a minimum four inches (4″) x four inches (4″). Longitude and latitude lines and north arrow will be indicated on the map and such lines will cross at or near the center of the quarrying operation;

24.2.e.3. The names and business address of the requestor to include a street address or route number;

24.2.e.4. A narrative description clearly describing the location of the quarrying operation;

24.2.e.5. The name and address of the Department of Environmental Protection Office where written comments on the request may be submitted;

24.2.f. Geologic cross sections, maps or plans of the quarrying operation determine the following information:

24.2.f.1. The locations (latitude and longitude) and elevations of all bore holes;

24.2.f.2. The nature and depth of the various strata or overburden including geologic formation names and/or geologic members;

24.2.f.3. The nature and thickness of any coal or other mineral to be extracted;

24.2.g. A map of appropriate scale which clearly identifies the coal extraction area versus quarrying area;

24.2.h. A general description of coal extraction and quarrying activities for the operation;

24.2.i. Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted;

24.2.j. If coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted;

24.2.k. The basis for all annual production, revenue, and fair market value estimates;

24.2.l. A summary of sale commitments and agreements, if any, that the applicant has received for future delivery of other minerals to be extracted from the mining area, or a description of potential markets for the other minerals;

24.2.m. If the other minerals are to be commercially used by the applicant, a description specifying the use; and

24.2.n. Any other information pertinent to the qualification of the operation as exempt.

24.3. Requirements for exemption.

24.3.a. Activities are exempt from the requirements of the Act if all of the following are satisfied:

24.3.a.1. The production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16⅔ percent of the total annual production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

24.3.a.2. Coal is extracted from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

24.3.a.3. The revenue derived from the coal extracted from the mining area, determined annually does not exceed fifty (50) percent of the total revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

24.3.b. Persons seeking or that have obtained an exemption from the requirements of the Act [West Virginia Surface Coal Mining and Reclamation Act] shall comply with the following:

24.3.b.1. Each other mineral upon which an exemption under this section is based must be a commercially valuable mineral for which a market exists or which is quarried in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

24.3.b.2. If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

24.4. Conditions of exemption.

A person conducting activities covered by this part shall:

24.4.a. Maintain on site the information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and the Department's exemption approval;

24.4.b. Notify the Department of Environmental Protection upon the completion or permanent cessation of all coal extraction activities.

24.5. Stockpiling of minerals.

24.5.a. Coal extracted and stockpiled may be excluded from the calculation of annual production until the time of its sale, transfer to a related entity or use:

24.5.a.1. Up to an amount equaling a 12 month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

24.5.a.2. For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12 month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

24.5.b. The Department of Environmental Protection shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

The Department of Environmental Protection may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

24.5.b.1. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

24.5.b.2. Except as provided in 24.5.b.3. of this section, the stockpiled other minerals do not exceed a 12 month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

24.5.b.3. The Department of Environmental Protection may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12 month limit established in 24.5.b.2. of this section if the operator can demonstrate to the Department of Environmental Protection's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

24.5.b.4. The Department of Environmental Protection may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by 24.5.b.2. and 3. of this section based on additional information available to the Department of Environmental Protection.

24.6. Revocation and enforcement.

24.6.a. The Department of Environmental Protection shall conduct an annual compliance review of the operation requesting exemption.

24.6.b. If the Department of Environmental Protection has reason to believe that a specific operation was not exempt at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department of Environmental Protection shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption will be revoked unless the operator demonstrates to the Department of Environmental Protection within 30 days that the operation in question should continue to be exempt.

24.6.c. If the Department of Environmental Protection finds that an operator has not demonstrated that activities conducted in the operation area qualify for the exemption, the Department of Environmental Protection shall revoke the exemption and immediately notify the operator and commenter(s). If a decision is made not to revoke an exemption, the Secretary shall immediately notify the operator and commenter(s).

24.6.d. Any adversely affected person by a determination of the Secretary pursuant to this section may file an appeal only in accordance with the provisions of WV § 22B–1–1 *et seq.* of this code, within thirty days after receipt of the determination. The filing of an appeal does not suspend the effect of the determination.

24.6.e. Direct enforcement.

24.6.e.1. An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of WV § 22–3 *et seq.* or [section] 38–2 *et seq.* that occurred prior to the revocation of the exemption. Provided, however, an operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should have known that the activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of WV [section] 22–3 *et seq.* or [section] 38–2 *et seq.* that occur during the period of the activities.

24.6.e.2. Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained, and shall comply with the reclamation standards of WV [section] 22–3 *et seq.* or [section] 38–2 *et seq.* with regard to conditions, areas, and activities existing at the time of revocation or denial.

24.7. Reporting requirements.

24.7.a.1. Following approval by the Department of Environmental Protection of an exemption for an operation, the person receiving the exemption shall file a quarterly production report with the Department of Environmental Protection containing the information specified in 24.7.a.3. of this section.

24.7.a.2. The report shall be filed no later than 30 days after the end of each quarter.

24.7.a.3. The information in the report shall cover:

24.7.a.3.A. Quarterly production of coal and other minerals, and

24.7.a.3.B. The cumulative production of coal and other minerals.

24.7.a.3.C. The number of tons of coal stockpiled;

24.7.a.3.D. The number of tons of other minerals stockpiled by the operator.

24.7.b.1. Following approval by the Department of Environmental Protection of an exemption for an operation, the person receiving the exemption shall file an annual production report with the Department of Environmental Protection containing the information specified in 24.7.b.3.of this section.

24.7.b.2. The report shall be filed no later than 30 days after the end of each calendar year.

24.7.b.3. The information in the report shall include:

24.7.b.3.a. The number of tons of extracted coal sold in bona fide sales and the total revenue derived from these sales;

24.7.b.3.b. The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of this coal;

24.7.b.3.c. The number of tons of coal stockpiled;

24.7.b.3.d. The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from these sales;

24.7.b.3.e. The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of these minerals;

24.7.b.3 .f. The number of tons of other commercially valuable minerals removed and stockpiled by the operator;

24.7.b.3.g. The annual production of coal and other minerals and the annual revenue derived from coal and other minerals; and

24.7.b.3.h. The annual production of coal and other minerals and the annual revenue derived from coal and other minerals during the preceding year.

24.8. Public Availability of Information.

24.8.1. Except as provided in 24.8.2, all information submitted to the Secretary shall be made immediately available for public inspection and copying at the office with jurisdiction over coal mining in the locality of the subject exempt operation, until at least three (3) years after expiration of the period during which the subject mining area is active.

24.8.2 The Secretary may keep information submitted to the Secretary confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and if the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this rule.

24.8.3. Information requested to be held as confidential under subsection 24.8.2 shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

24.9. Right of Inspection and Entry.

24.9.1 Authorized representatives of the Secretary and the Secretary of the U.S. Department of the Interior shall have the right to conduct inspections of operations claiming exemption.

24.9.2. Each authorized representative of the Secretary and the Secretary of the U.S. Department of the Interior conducting an inspection under this rule shall:

24.9.2.a. Have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

24.9.2.b. At reasonable times and without delay, have access to and copy any records relevant to the exemption; and

24.9.2.c. Have a right to gather physical and photographic evidence to document conditions, practices, or violations at a site.

24.9.3. No search warrant shall be required with respect to any activity under 24.9.1 and 24.9.2., except that a search warrant may be required for entry into a building.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

*Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

*Electronic Comments*

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. WV–102–FOR@ and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

**Availability of Comments**

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or

town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on May 27, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

**Public Meeting**

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES:** We will make a written summary of each meeting a part of the Administrative Record.

**IV. Procedural Determinations**

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

**Executive Order 13132—Federalism**

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not

have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 2004.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 04–10747 Filed 5–11–04; 8:45 am]

BILLING CODE 4310–05–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–2004–0085; FRL–7358–5]**

## Thifensulfuron-methyl; Proposed Tolerance Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to reinstate corn tolerances for the herbicide thifensulfuron-methyl. These corn tolerances were previously established but inadvertently removed shortly thereafter. Registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of thifensulfuron-methyl on corn currently exist and have existed for more than 9 years.

**DATES:** Comments must be received on or before July 12, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP–2004–0085, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0085.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0085.
- *Hand Delivery/carrier*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0085. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number OPP–2004–0085. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are anonymous access systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET(*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

*C. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

*A. What Action is the Agency Taking?*

On May 18, 1994 (59 FR 25821) (FRL–4778–9), EPA published a Notice of Final Rulemaking in the **Federal Register** in which the Agency established tolerances for residues of the herbicide thifensulfuron-methyl in 40 CFR 180.439 for field corn fodder, forage and grain at 0.1 parts per million (ppm), 0.1 ppm and 0.05 ppm, respectively, all with an effective date of May 18, 1994.

Not long after, on June 22, 1994 (59 FR 32085) (FRL–4868–8), EPA published a Notice of Final Rulemaking in the **Federal Register** in which the Agency established tolerances for residues of the herbicide thifensulfuron-methyl in 40 CFR 180.439 for oat, grain and oat, straw with an effective date of June 22, 1994. However, the codification section of that June 22nd final rule inadvertently left out the corn tolerances that were newly established on May 18, 1994. In the preamble text of the June 22nd final rule, no action was directed toward the corn tolerances established on May 18th. The establishment of three corn tolerances on May 18th was inadvertently missed in the final rule of June 22nd. Consequently, the three corn tolerances established on May 18th did not appear in § 180.439 of the July 1, 1994 version of the 40 CFR nor in subsequent annual versions.

Currently, there are active products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which list corn as a use site for thifensulfuron-methyl application. These registrations have existed since 1994 with associated tolerances established in May 1994. EPA is proposing to correct the inadvertent error.

Also, in accordance with current Agency practice, the commodity terminologies for the tolerances should be revised from corn forage, field to corn, field, forage; corn grain, field to corn, field, grain; and corn fodder, field to corn, field, stover.

Therefore, EPA is proposing to reinstate the tolerances in 40 CFR 180.439 for residues of thifensulfuron-methyl in or on corn, field, forage at 0.1 ppm; corn, field, stover at 0.1 ppm; and corn, field, grain at 0.05 ppm. The Agency will reassess these tolerances according to FQPA standards in the near future.

On February 13, 2004 (69 FR 7161) (FRL–7338–6), EPA published a direct final rule which would have reinstated the three corn tolerances in 40 CFR 180.439. However, during the public comment period, EPA received in docket OPP–2003–0363 one adverse comment from a private individual. In the February 13th direct final rule, EPA stated that if a relevant adverse comment was received during the comment period, that EPA would publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect and that the Agency would publish a notice of proposed rulemaking in a future issue of the **Federal Register**. EPA published a withdrawal of the February 13th direct final rule on April 14, 2004 (69 FR 19767) (FRL–7351–9).

*Comment.* On February 17, 2004, a private individual from New Jersey commented that he was opposed to the EPA approval of yet another chemical to be placed on plants and stated that zero tolerance is the only tolerance that should be tolerated on plants.

*Agency Response.* The comment was general in nature and did not address the inadvertent or improper removal of the established corn tolerances for thifensulfuron-methyl. Nor did the comment address current active registrations for use of thifensulfuron-methyl on corn, which have existed since 1994. Thus, the action proposed here is not approving a new chemical but reinstating the corn tolerances in 40 CFR 180.439 to correct their inadvertent removal.

*B. What is the Agency's Authority for Taking this Action?*

A tolerance represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore adulterated under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. et seq.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States. EPA will establish and

maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as import tolerances, are necessary to allow importation into the United States of food containing such pesticide residues.

*C. When do These Actions Become Effective?*

EPA is proposing that the three corn tolerances for thifensulfuron-methyl be reinstated on the day of publication of a final rule in the **Federal Register**.

## III. Statutory and Executive Order Reviews

In this proposed rule EPA is proposing to reinstate specific tolerances established under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, I certify that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 3, 2004.

**James Jones,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

2. Section 180.439 is revised to read as follows:

### § 180.439 Thifensulfuron-methyl (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophene carboxylate); tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide thifensulfuron-methyl (methyl-3-[[[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophene carboxylate) in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Barley, grain | 0.05 |
| Barley, straw | 0.1 |
| Corn, field, forage | 0.1 |
| Corn, field, grain | 0.05 |
| Corn, field, stover | 0.1 |
| Oat, grain | 0.05 |
| Oat, straw | 0.1 |
| Soybean | 0.1 |
| Wheat, grain | 0.05 |
| Wheat, straw | 0.1 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 04–10780 Filed 5–11–04; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 194

**[FRL–7660–1]**

## Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From Lawrence Livermore National Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability; opening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization by the Central Characterization Project (CCP) of transuranic (TRU) radioactive waste at the Lawrence Livermore National Laboratory (LLNL) in California proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are available for review in the public dockets listed in **ADDRESSES.** We will consider public comments received on or before the due date mentioned in **DATES.** In accordance with EPA's WIPP Compliance Criteria, we will conduct an inspection of the Central Characterization Project (CCP) at LLNL to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's CCP, DOE can characterize TRU waste consistent with the Compliance Criteria. EPA will perform this inspection the week of May 3, 2004. This notice of the inspection and comment period accords with 40 CFR 194.8.

**DATES:** EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before June 11, 2004.

**ADDRESSES:** Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0066–2004–0053. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Ed Feltcorn, Office of Radiation and Indoor Air, (202) 343–9422. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. How Can I Get Copies of This Document and Other Related Information?*

*1. Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2004–0066. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: In Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

*2. Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will

be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

*B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2004–0066. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2004–0066. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0066.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0066. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2004–0066.

*C. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

**II. Background**

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decisionmaking process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the TRU waste characterization activities

performed by the DOE's Central Characterization Project (CCP) staff at LLNL in accordance with Condition 3 of the WIPP certification. The CCP is a mobile characterization facility that DOE is developing to assist TRU waste generator sites with complex waste characterization activities. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by LLNL for characterization of the disposal of newly-generated and retrievably-stored debris waste at the WIPP. The overall program adequacy and effectiveness of CCP–LLNL documents will be based on the following DOE documents: (1) CCP–PO–001—Revision 8, 3/15/04—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 9, 3/15/04—CCP Transuranic Waste Certification Plan. EPA has placed these DOE documents pertinent to the CCP/LLNL inspection in the public docket described in **ADDRESSES.** They can be found online in EDOCKET ID No. OAR–2004–0066 and also in hard copy form as item II–A2–49 in Docket A–98–49. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection is scheduled to take place the week of May 3, 2004.

EPA will inspect the following technical elements for characterizing newly-generated and retrievably-stored TRV solid and debris waste: Data validation and verification, acceptable knowledge (AK), nondestructive assay (HENC/Gamma), Digital Radiography/Computed Tomography, visual examination (VE), and data tracking and reporting via the WIPP Waste Information System (WWIS).

If EPA determines as a result of the inspection that the proposed CCP quality assurance and waste characterization processes and programs used at LLNL adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to dispose of transuranic waste from LLNL (via the CCP) at WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: May 5, 2004.

**Jeffrey R. Holmstead,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 04–10775 Filed 5–11–04; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 04–963; MB Docket No. 04–113, RM–10923, RM–10898; MB Docket No. 04–114, RM–10924, 10925; MB Docket No. 04–115, RM–10926; MB Docket No. 04–116, RM–10927; MB Docket No. 04–117, RM–10928; MB Docket No. 04–118, RM–10929; MB Docket No. 04–119, RM–10930; MB Docket No. 04–120, RM–10931, MB Docket No. 04–121, RM–10932; MB Docket No. 04–122, RM–10933, RM–10934; MB Docket No. 04–123, RM–10935; MB Docket No. 04–124, RM–10936, RM–10937, RM–10938, RM–10939; MB Docket No. 04–125, RM–10940]**

### Radio Broadcasting Services; Amherst, NY, Berthold, ND, Cordell, OK, Dallas, OR, Dillsboro, NC, Hubbardston, MI, Huntsville, MO, Laurie, MO, Madison, MO, Madras, OR, Weatherford, OK, West Tisbury, MA, Wynnewood, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth thirteen reservation proposals requesting to amend the FM Table of Allotments by reserving certain vacant FM allotments for noncommercial educational use in Amherst, NY, Berthold, ND, Cordell, OK, Dallas, OR, Dillsboro, NC, Hubbardston, MI, Huntsville, MO, Laurie, MO, Madison, MO, Madras, OR, Weatherford, OK, West Tisbury, MA, Wynnewood, OK. The Audio Division requests comment on petitions filed Starboard Media Foundation, Inc. proposing the reservation of vacant Channel 282A at West Tisbury, MA, vacant Channel 237A at Dillsboro, NC, and Channel 264C at Berthold, ND for noncommercial use. The reference coordinates for Channel *282A at West Tisbury are 41–22–52 North Latitude and 70–40–30 West Longitude. The reference coordinates for Channel *237A at Dillsboro are 35–15–56 North Latitude and 89–9–16 West Longitude. The reference coordinates for Channel *264C at Berthold are 48–18–54 North Latitude and 101–44–22 West Longitude. The Audio Division requests comment on petitions filed by Living Proof, Inc. and Lansing Community College proposing the reservation of vacant Channel 279A at Hubbardston, MI. The reference coordinates for Channel *279A at Hubbardston are 43–5–53 North Latitude and 84–51–54 West Longitude. *See* **SUPPLEMENTARY INFORMATION,** infra.

**DATES:** Comments must be filed on or before June 7, 2004, and reply comments on or before June 22, 2004.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Mark Follett, Starboard Media Foundation, Inc., 2300 Riverside Drive, Green Bay, WI 54301; Harry C. Martin, Esq. and Lee G. Petro, Esq., c/o Living Proof, Inc., Fletcher, Heald & Hildreth PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209; John Crigler, c/o Lansing Community College, Garvey Schubert Barer, 1000 Potomac Street, NW., Fifth Floor, Washington, DC 20007; Patrick J. Vaughn, General Counsel, American Family Association, Post Office Drawer 2440, Tupelo, MS 38803; Arthur H. Harding, Esq., Christopher G. Wood, Esq., Mark B. Denbo, Esq., c/o Youngshine Media, Inc., Fleischman and Walsh, L.L.P., 1919 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20006; Russell C. Powell, Esq., c/o Great Plains Christian Radio, Inc., Taylor & Powell, LLP, 908 King Street, Suite 300, Alexandria, VA 22314; Todd D. Gray, Esq., Margaret L. Miller, Esq. and Barry S. Persh, Esq., c/o University of Oklahoma, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, Suite 800, Washington, DC 20036; Jeffrey D. Southmayd, Esq., c/o Sister Sherry Lynn Foundation, Inc., Southmayd & Miller, 1220 19th Street, NW., Suite 400, Washington, DC 20036; Betty McArdle, Vice-President/Treasurer, Northwest Community Radio Project, 3740 SW Comus Street, Portland, OR 97219; Donald E. Martin, Esq., c/o Dallas, Oregon Seventh-Day Adventist Church, Donald E. Martin, P.C., P.O. Box 8433, Falls Church, VA 22041, William J. Byrnes, Esq., c/o Radio Bilingue, Inc., 7921 Old Falls Road, McLean, VA 22102; David A. O'Connor, Esq., c/o Lifetime Ministries, Inc., Holland & Knight LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–113, 04–114, 04–115, 04–116, 04–117, 04–118, 04–119, 04–120, 04–121, 04–122, 04–123, 04–124, 04–125 adopted April 12, 2004 and released April 14, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Audio Division requests comment on petitions filed by American Family Association proposing the reservation of vacant Channel 278C2 at Huntsville, MO, vacant Channel 265C3 at Laurie, MO, and vacant Channel 247C3 at Madison, MO for noncommercial use. The reference coordinates for Channel *278C2 at Huntsville are 39–29–45 North Latitude and 92–25–5 West Longitude. The reference coordinates for Channel *265C3 at Laurie are 38–8–30 North Latitude and 92–50–37 West Longitude. The reference coordinates for Channel *247C3 at Madison are 39–24–37 North Latitude and 92–10–58 West Longitude.

The Audio Division requests comment on a petition filed by Youngshine Media, Inc. proposing the reservation of vacant Channel 221A at Amherst, NY for noncommercial use. The reference coordinates for Channel *221A at Amherst are 42–58–42 North Latitude and 78–48–0 West Longitude.

The Audio Division requests comment on a petition filed by Great Plains Christian Radio, Inc. proposing the reservation of vacant Channel 229A at Cordell, OK for noncommercial use. The reference coordinates for Channel *229A at Cordell are 35–17–24 North Latitude and 98–59–24 West Longitude.

The Audio Division requests comment on petitions filed by Great Plains Christian Radio, Inc. and University of Oklahoma proposing the reservation of vacant Channel 286A at Weatherford, OK for noncommercial use. The reference coordinates for Channel *286A at Weatherford are 35–33–2 North Latitude and 98–43–59 West Longitude.

The Audio Division requests comment on a petition filed by Sister Sherry Lynn Foundation, Inc. proposing the reservation of vacant Channel 283A at Wynnewood, OK for noncommercial use. The reference coordinates for Channel *283A at Wynnewood are 34–38–42 North Latitude and 97–10–0 West Longitude.

The Audio Division requests comment on petitions filed by Northwest Community Radio Project, Dallas, Oregon Seventh-Day Adventist Church, Radio Bilingue, Inc., and Lifetime Ministries, Inc. proposing the reservation of vacant Channel 252C3 at Dallas, Oregon for noncommercial use. The reference coordinates for Channel *252C3 at Dallas are 44–55–6 North Latitude and 123–19–0 West Longitude.

The Audio Division request comment on a petition filed by Radio Bilingue, Inc. proposing the reservation of vacant Channel 251C1 at Madras, Oregon for noncommercial use. The reference coordinates for Channel *251C1 at Madras are 44–50–2 NL and 120–45–55 WL. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73–RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Channel *282A and by removing Channel 282A at West Tisbury.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel *279A and by removing Channel 279A at Hubbardston.

4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel *278C2 and by removing Channel 278C2 at Huntsville; by adding Channel *265C3 and by removing Channel 265C3 at Laurie; by adding Channel *247C3 and by removing Channel 247C3 at Madison.

5. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Channel *237A and by removing Channel 237A at Dillsboro.

6. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Channel *264C and by removing Channel 264C at Berthold.

7. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel *221A and by removing Channel 221A at Amherst.

8. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel *229A and by removing Channel 229A at Cordell; by adding Channel *286A and by removing Channel 286A at Weatherford; by adding Channel *283A and by removing Channel 283A at Wynnewood.

9. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel *252C3 and by removing Channel 252C3 at Dallas; and by adding Channel *251C1 and by removing Channel 251C1 at Madras.

Federal Communications Commission.

**Peter H. Doyle,**

*Chief, Audio Division, Media Bureau.*

[FR Doc. 04–10681 Filed 5–11–04; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 69, No. 92
Wednesday, May 12, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Farm Service Agency

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCIES:** Rural Housing Service, Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the subject agencies' intention to request an extension for a currently approved information collection in support of the programs for 7 CFR Part 1806, subpart A, "Real Property Insurance." This renewal does not involve any revisions to the program regulations.

**DATES:** Comments on this notice must be received on or before July 12, 2004 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Cathy Quayle, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522, telephone (202) 690–4018. Electronic mail: *CQuayle@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR, Part 1806–A—Real Property Insurance.

*OMB Number:* 0575–0087.

*Expiration Date of Approval:* November 30, 2004.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* This regulation governs the servicing of property insurance on buildings and land securing the interest of the Farm Service Agency (FSA) in connection with an FSA Farm Loan Program Loan and the Multi-Family Housing Program of the Rural Housing Service (RHS). The information collections pertain primarily to the verification of insurance on property securing Agency loans. This information collection is submitted by FSA or RHS borrowers to Agency offices. It is necessary to protect the government from losses due to weather, natural disasters, or fire and ensure that loan applicants meet hazard insurance requirements:

*Estimate of Respondent Burden:* Public reporting for this collection of information is estimated to average 30 minutes per response.

*Respondents:* Individuals or households, businesses or other for profit organizations and farms.

*Estimated Number of Respondents:* 4,550.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2,275.

Copies of this information collection can be obtained from: Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0035.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of subject agencies, including whether the information will have practical utility; (b) the accuracy of agencies estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 6, 2004.

**Arthur A. Garcia,**

*Administrator, Rural Housing Service.*

Dated: April 30, 2004.

**James R. Little,**

*Administrator, Farm Service Agency.*

[FR Doc. 04–10714 Filed 5–11–04; 8:45 am]
BILLING CODE 3410–XV–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### California Coast Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The California Coast Provincial Advisory Committee (PAC) will meet on June 2 and 3, 2004, in Lake County, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan (NWFP).

**DATES:** The meeting will be held from 9 a.m. to 5 p.m. on June 2, and from 9 a.m. to noon on June 3, 2004.

**ADDRESSES:** The meeting will be held at the Robinson Rancheria Administration Building, 1545 E. Highway 20 in Nice, CA.

**FOR FURTHER INFORMATION CONTACT:** Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–1137; e-mail *pybrown@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Regional Ecosystem Office (REO) update; (2) Provincial Interagency Executive Committee (PIEC) response to the Aquatic Conservation Subcommittee report and recommendations; (3) Redwood National and State Parks public scoping for the Updated Road Rehabilitation Strategy; (4) follow up proposal regarding Redwood Creek Estuary restoration; (5) panel discussion on options for silvicultural treatments; (6) agency and constituency updates; (7) introduction of an issue for consideration by the PAC concerning the collaboration role of the PAC on Healthy Forests Restoration Act projects: (8) field trip to the Upper Lake District, Pillsbury Homesite Fuel Reduction Project area; and (9) public comment. The meeting is open to the

public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 4, 2004.

**James D. Fenwood,**

*Forest Supervisor.*

[FR Doc. 04–10725 Filed 5–11–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### McKenzie Canyon Irrigation Project, Sisters, OR

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the McKenzie Canyon Irrigation Project Plan and Environmental Assessment, Sisters, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Bob Graham, State Conservationist, Natural Resources Conservation Service, 101 SW. Main, Suite 1300, Portland, Oregon 97204, telephone 503–414–3200.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Bob Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is for agricultural water management and water conservation. The planned works of improvement include the replacement of 14.5 miles of open irrigation water delivery canals with 10.5 miles of high density polyethylene (HDPE) pressurized pipelines, the addition of seven miles of on-farm pipeline laterals, and the installation of three livestock/wildlife watering facilities. This project will conserve 3,745 acre feet of water, save 3.3 million kilowatts of electricity, and enhance fishery habitat and water quality in Squaw Creek.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Terry Nelson, NRCS, 503–414–3014.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: May 3, 2004.

**Bob Graham,**

*State Conservationist.*

[FR Doc. 04–10704 Filed 5–11–04; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 20–2004]**

### Foreign-Trade Zone 40—Cleveland, OH, Area Application for Expansion and Reorganization

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand and reorganize its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 5, 2004.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97); June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); April 2002 (Board Order 1224, 67 FR 20087, 4/15/02); August 2003 (Board Order 1289, 68 FR 52384, 9/3/03; Board Order 1290, 68 FR 52384, 9/3/03; and, Board Order 1295, 68 FR 52383, 9/3/03); and, March 2004 (Board Order 1320, 69 FR 13283, 3/22/04 and Board Order 1322, 69 FR 17642, 4/5/04).

The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* consists of 1,339 acres in Cleveland, which includes the Port of Cleveland complex (Site 1A–94 acres), the Cleveland Bulk Terminal (Site 1B–45 acres), and the Tow Path Valley Business Park (Site 1C–1,200 acres); *Site 2* (175 acres)—the IX Center in Brook Park, adjacent to Cleveland Hopkins International Airport; *Site 3* consists of 2,243 acres, which includes the Cleveland Hopkins International Airport Complex (Site 3A–1,727 acres), the Snow Road Industrial Park in Brook Park (Site 3B–42 acres), and the Brook Park Road Industrial Park (Site 3C–322 acres) in Brook Park; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (17 acres)—within the Collinwood Industrial Park, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* consists of 193 acres in Strongsville, which includes the Strongsville Industrial Park (Site 7A–174 acres) and the Progress Drive Business Park (Site 7B–19 acres); *Site 8* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; *Site 9* (4 acres)—within the Frane Properties Industrial Park, 2399 Forman Road, Morgan Township; *Site 10* (60 acres)—within the Solon Business Park, Solon; *Site 11* (170 acres, 2 parcels)—within the 800-acre Harbour Point Business Park, Baumhart Road, at the intersections of U.S. Route 6 and Ohio Route 2, Vermilion; and, *Temporary Site* (11 acres)—3 warehouse locations: 29500 Solon Road (250,000 sq. ft.), 30400 Solon Road (110,000 sq. ft.), and 31400 Aurora Road (117,375 sq. ft.) located within the Solon Business Park in Solon (expires 4/1/05). Applications are pending with the FTZ Board to expand FTZ 40 to include the Cleveland Business Park (Site 3) in Cleveland (Docket 54–2003) and a site at the Broad Oak Business Park (Proposed Site 12) in the Village of Oakwood, Ohio (Docket 19–2004).

The applicant is now requesting authority to expand *Site* 10 at the Solon Business Park in Solon to include the temporary site of 11 acres on a permanent basis and an additional 47 acres within the park (total acreage—118 acres, 3 parcels) and to expand *Site 7B* at the Progress Drive Business Park in Strongsville to include two additional parcels located at 12200 Alameda Parkway (9 acres) and at 20770

Westwood Drive (20 acres) (total acreage—48 acres). No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

The applicant is also requesting redesignation of the general-purpose zone sites as follows:

—Site 1 would remain unchanged.
—Existing Site 2 and Site 3 would be combined to become Site 2 as follows: Site 2A—Cleveland Hopkins International Airport; Site 2B—International Exhibition Center (I–X) Center; Site 2C—Snow Road Industrial Park; and, Site 2D—Brook Park Road Industrial Park (total—2,266 acres). This site would also include the proposed site for Cleveland Business Park (Docket 54–2003).
—Existing Site 4 (Burke Lakefront Airport) would become Site 3.
—Existing Site 5 and Site 10 would be combined to become Site 4 as follows: Site 4A—Emerald Valley Business Park and Site 4B—Solon Business Park (total—358 acres). This site would also include the proposed expansion of the Solon Business Park as noted in the above paragraph.
—Existing Site 6 (Collinswood Industrial Park) would become Site 5.
—Existing Site 7 would now become Site 6 as follows: Site 6A—Strongsville Industrial Park and Site 6B—Progress Drive Business Park (total—193 acres). This site would also include the proposed expansion of Progress Drive Business Park as noted in the above paragraph.
—Existing Site 8 (located at 3830 Kelley Avenue) would become Site 7.
—Existing Site 9 (Frane Properties Industrial Park) would become Site 8.
—Existing Site 11 (Harbour Point Business Park) would become Site 9.
—Proposed Site 12 (Broad Oak Business Park) (if approved) would become Site 10.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building, Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,
2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB, Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is July 12, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: May 5, 2004.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04–10771 Filed 5–11–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 19–2004]**

### Foreign-Trade Zone 40—Cleveland, OH, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 5, 2004.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97); June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); April 2002 (Board Order 1224, 67 FR 20087, 4/15/02); August 2003 (Board Order 1289, 68 FR 52384, 9/3/03; Board Order 1290, 68 FR 52384, 9/3/03; and, Board Order 1295, 68 FR 52383, 9/3/03); and, March 2004 (Board Order 1320, 69 FR 13283, 3/22/04 and Board Order 1322, 69 FR 17642, 4/5/04).

The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* consists of 1,339 acres in Cleveland, which includes the Port of Cleveland complex (Site 1A—94 acres), the Cleveland Bulk Terminal (Site 1B—45 acres), and the Tow Path Valley Business Park (Site 1C—1,200 acres); *Site 2* (175 acres)—the IX Center in Brook Park, adjacent to Cleveland Hopkins International Airport; *Site 3* consists of 2,243 acres, which includes the Cleveland Hopkins International Airport Complex (Site 3A—1,727 acres), the Snow Road Industrial Park in Brook Park (Site 3B—42 acres), and the Brook Park Road Industrial Park (Site 3C—322 acres) in Brook Park; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (17 acres)—within the Collinwood Industrial Park, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* consists of 193 acres in Strongsville, which includes the Strongsville Industrial Park (Site 7A–174 acres) and the Progress Drive Business Park (Site 7B—19 acres); *Site 8* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; *Site 9* (4 acres)—within the Frane Properties Industrial Park, 2399 Forman Road, Morgan Township; *Site 10* (60 acres)—within the Solon Business Park, Solon; *Site 11* (170 acres, 2 parcels)—within the 800-acre Harbour Point Business Park, Baumhart Road, at the intersections of U.S. Route 6 and Ohio Route 2, Vermilion; and, *Temporary Site* (11 acres)—3 warehouse locations: 29500 Solon Road (250,000 sq. ft.), 30400 Solon Road (110,000 sq. ft.), and 31400 Aurora Road (117,375 sq. ft.) located within the Solon Business Park in Solon (expires 4/1/05). An application is currently pending with the FTZ Board to expand FTZ 40-Site 3 to include 172 acres within the Cleveland Business Park, Cleveland (Docket 54–2003).

The applicant is now requesting authority to expand the general-purpose zone to include an additional site in the area: *Proposed Site 12* consists of 42 acres (2 parcels) at the Broad Oak Business Park located at the intersection of Broadway Avenue and Golden Oak Parkway Avenue (near Interstate 271) in the Village of Oakwood (Cuyahoga County), Ohio. The property is owned by the Geis Construction Company and it will provide public warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff

has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is July 12, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: May 5, 2004.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04–10772 Filed 5–11–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 18–2004]**

### Foreign-Trade Zone 183—Austin, TX Subzone 183A—Dell Computer Corporation Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority to reorganize and expand FTZ 183 and SZ 183A (Dell Computer Corporation) in Austin, Texas, within and adjacent to the Austin Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 5, 2004.

FTZ 183 was approved on December 23, 1991 (Board Order 550, 57 FR 42, 1/2/92), expanded twice in 1998 (Board Order 964, 63 FR 13837, 3/23/98; Board Order 994, 63 FR 39071, 7/21/98), expanded in 1999 (Board Order 1035, 64 FR 19978, 4/23/99), and expanded in 2001 (Board Order 1143, 66 FR 16650, 3/27/01). The zone currently consists of eight sites in the Austin, Texas, area: *Site 1* (291 acres, 7 parcels)—Austin Enterprise site, within the Austin Enterprise Zone Area along Highway 290 and the Ben White Boulevard-Montopolis Drive area, Austin; *Site 2* (50 acres)—Balcones Research site located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard; *Site 3* (1,612 acres, 13 parcels) High Tech Corridor site located along I–35, 14 miles north of downtown Austin (site straddles Austin-Round Rock City line); *Site 4* (122 acres) Cedar Park site, some 8 miles northwest of the Austin city limits, in Williamson County; *Site 5* (246 acres, 2 parcels) Round Rock "SSC" site located along I–35 between Chandler Road and Westinghouse Road on the northern edge of the City of Round Rock; *Site 6* (246 acres) Georgetown site, located along I–35 and U.S. 81, south of downtown Georgetown; *Site 7* (40 acres) San Marcos site, located within the San Marcos Municipal Airport facility in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line; and, *Site 8* (200 acres) MET Center industrial park located between U.S. Highway 183 South and State Highway 71 East in southeast Austin, some 5 miles northwest of the new Austin Bergstrom International Airport.

Subzone 183A was approved on November 16, 1992 (Board Order 607, 57 FR 56902, 12/1/92) and expanded in 1996 (Board Order 861, 62 FR 1316, 1/9/97), in 1997 (Board Order 912, 62 FR 42486, 8/7/97) and in 1999 (Board Order 1068, 64 FR 72643, 12/28/99). The subzone currently consists of the following six sites in Austin: *Site 1* (55 acres)—located at the Braker Center Industrial Park at the intersection of Braker Lane and Metric Boulevard; *Site 2* (12 acres)—McKalla 2 (124,000 sq. ft.) located at 2500 McHale Court within the Rutland Center Industrial Park and McKalla 1 (135,000 sq. ft.) located at 10220 McKalla Drive; *Site 3* (11 acres)—Research 1 (100,685 sq. ft.) located at 8701 Research Boulevard; *Site 4* (33 acres, 546,750 sq. ft.)—located in Metric Center at 9500–9800 Metric Boulevard, 9715 Burnet Road and 2106 W. Rundberg; *Site 5* (4 acres, 61,676 sq. ft.)—located in Longhorn Business Park at 2545 Brockton Drive; and, *Site 6* (11 acres, 96,000 sq. ft.)—located in Walnut Creek Corporate Center at 8619 and 8701 Wall Street.

The applicant is requesting authority to reorganize and expand the zone project as follows:

—Remove 75 acres from FTZ 183—Site 4 (Cedar Park) due to changed circumstances (new total—47 acres);
—Remove McKalla 1 parcel (6.5 acres) located at 10220 McKalla Drive from SZ 183A—Site 2 (new total—5.5 acres);
—Remove Metric 6 parcel (3.1 acres) located at 9500–9800 Metric Boulevard and Metric 4/12 parcel (21.5 acres) located at 9715 Burnett Road from SZ 183A—Site 4 (new total—8.4 acres); and,
—Expand FTZ 183—Site 3 (High-Tech Corridor) to include an additional 84 acres at: Metric Center (45.5 acres—which includes the McKalla 1, Metric 6 and Metric 4/12 parcels, and two new buildings—Metric 10E and 10W) in Austin; and, Crystal Park (38.5 acres, 5 buildings) located at 110, 116, 120, 106D and 106E Old Settlers Boulevard in Round Rock (new total—1,696 acres).

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,
2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is July 12, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 2004.

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 1700 North Congress, Suite 130, Austin, TX 78701.

Dated: May 5, 2004.
**Dennis Puccinelli,**
*Executive Secretary.*
[FR Doc. 04–10770 Filed 5–11–04; 8:45 am]
BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**Docket No. 01–BXA–18**

### Action Affecting Export Privileges; Charlie Kuan

In the Matter of: Charlie Kuan, 2541 Robin Court, Union City, California 94587, Respondent

### Order

The Bureau of Industry and Security, United States Department of commerce ("BIS") having initiated an administrative proceeding against Charlie Kuan, the former President of Suntek Microwave Inc., ("Kuan") pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2003)) ("Regulations"),[1] and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000;)) ("Act"),[2] based on the charging letter issued to Kuan that alleged that Kuan committed 17 violations of the regulations. Specifically, the charges are:

1. *One violation of 15 CFR 787A.2—Aiding and Abetting an Unlicensed Export:* On or about December 1, 1996, Kuan aided and abetted the unlicensed export of detector log video amplifiers, items subject to the former Regulations and classified under ECCN 3A001.b.4.a, by authorizing the procurement of the detector log video amplifiers by Silicon Valley Scientific Instruments Corporation (SVSIC) from Suntek Microwave, Inc. (Suntek) who then exported them to the People's Republic of China (PRC) without a validated license as required by Section 771A.1 of the former Regulations.

2. *One violation of 15 CFR 764.2(e)—Transfer of Controlled Commodity Knowing That It Will be Exported Without a License:* On or about January 27, 1997, Kuan authorized the procurement of detector log video amplifiers, items subject to the Regulations and classified under ECCN 3A001.b.4.a, by SVSIC from Suntek knowing or having reason to know that SVSIC would export them to the PRC without a license as required by Sections 742A.4 and 742.5 of the Regulations.

3. *Nine Violations of 15 CFR 764.2(b)—Aiding and Abetting an Unlicensed Export:* From on or about November 1996 through on or about April 2000, Kuan arranged for the entrance of citizens of the PRC, not citizens or permanent resident aliens of the United States, into the United States, knowing or having reason to know that Suntek then would release the U.S.-origin technology classified under ECCN 3E001 to them without the licenses required under Sections 742.4 and 742.5 of the Regulations.

4. *One Violation of 15 CFR 764.2(a)—False Statements on License Application:* On or about July 25, 1997, Suntek filed an application for a license with BIS to export detector log video amplifiers to the PRC. On the application, Suntek stated that the purchaser, intermediate consignee, ultimate consignee, and end-user were China Electronic Science & Technical University when, in fact, China Electronic Science & Technical University was not the purchaser, intermediate consignee, ultimate consignee, or end-user. Kuan certified on the license application that all information contained therein was true and correct when, in fact, Kuan knew or had reason to know that the information contained therein was false.

5. *Five Violations of 15 CFR 764.2(e)—Exporting Without Licenses:* On or about February 4, 1998, February 26, 1998, April 28, 1998, May 7, 1998, and June 8, 1998, Kuan authorized the sales and exports of detector log video amplifiers, items subject to the Regulations and classified under ECCN 3A001.b.4.a, by Suntek from the United States to the PRC. At the time Kuan authorized the exports, Kuan knew or had reason to know that no licenses were obtained for the exports as required under Sections 742.4 and 742.5 of the Regulations.

BIS and Kuan having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me; *It is therefore ordered:*

*First,* that a civil penalty of $187,000 is assessed against Kuan, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

*Second,* that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Kuan will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

*Third,* for a period 20 years from the date of entry of the Order, Charlie Kuan, 2541 Robin Court, Union City, California 94587, when acting for or on behalf of Kuan, his assigns, representatives, agents, or employees ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in

[1] The regulations governing the violations at issue are found in the 1996, 1997, 1998, 1999 and 2000 versions of the Code of Federal Regulations (15 CFR parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 CFR parts 768–799 (1997, 1998, 1999 and 2000)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR part 768A–799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730–774, effective April 24, 1996. The 2003 Regulations establish the procedures that apply to this matter.

[2] From august 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2003 (3 CFR., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Sixth, that this order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that, as authorized by Section 766.18(c) of the Regulations, the civil penalty set forth above shall be suspended in its entirety for one year from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, Kuan has committed no violation of the Act or any regulation, order or license issued thereunder.

Eighth, that the charging letter, the Settlement Agreement, and this Order, in addition to the record of the case, shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 6th day of May 2004.

**Julie L. Myers,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 04–10766 Filed 5–11–04; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[Docket No. 01–BXA–19]**

### Action Affecting Export Privileges; Suntek Microwave, Inc.

In the Matter of: Suntek Microwave, Inc., 8698 Thorton Avenue, Newark, California 94560, Respondent

### Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having initiated an administrative proceeding against Suntek Microwave, Inc. ("Suntek") pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2003)) ("Regulations"),[1] and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) ("Act"),[2] based on the charging letter issued to Suntek that alleged that Suntek committed 25 violations of the Regulations. Specifically, the charges are:

1. *One Violation of 15 CFR 787A.2—Aiding and Abetting a Violation—Aiding and Abetting an Unlicensed Export:* On or about December 1, 1996, Suntek aided and abetted the unlicensed export of detector log video amplifiers, items subject to the Regulations, by selling them to Silicon Valley Scientific Instruments Corporation (SVSIC) who then exported them to the Peoples Republic of China (PRC) without a validated license as required by Section 771A.1 of the former Regulations.

2. *One Violation of 15 CFR 764.2(e)—Acting with Knowledge—Transfer of Controlled Commodity Knowing That It Will be Exported Without a License:* On or about January 27, 1997, Suntek transferred detector log video amplifiers to SVSIC knowing or having reason to know that SVSIC would export them to the PRC without a license as required by Sections 742.4 and 742.5 of the Regulations. SVSIC subsequently exported the detector log video amplifiers to the PRC.

3. *Nine Violations of 15 CFR 764.2(a)—Engaging in Prohibited Conduct—Release of U.S.-Origin Technology to Foreign Nationals in the United States:* From on or about November 1996 through on or about April 2000, Suntek released U.S.-origin technology subject to the former Regulations and the Regulations to citizens of the PRC, not citizens or permanent resident aliens of the United States, without licenses from BIS. Suntek's release of the technology within the United States to citizens of the PRC constituted exports under 734.2(b) of the Regulations and required licenses under Sections 742.4 and 742.5 of the Regulations.

4. *Four Violations of 15 CFR 764.2(g)—Misrepresentation and Concealment of Facts—False Statements on License Application:* On or about July 25, 1997, Suntek filed an application for a license with BIS to export detector log video amplifiers to the PRC. On the application, Suntek stated that the purchaser, intermediate consignee, ultimate consignee, and end-user were China Electronic Science & Technical University when, in fact, China Electronic Science & Technical University was not the purchaser,

[1] The Regulations governing the violations at issue are found in the 1996, 1997, 1998, 1999 and 2000 versions of the Code of Federal Regulations, (15 CFR parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 CFR parts 768–799 (1997, 1998, 1999 and 2000)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR parts 768A–799A. As an interim measure that was part of the transition to newly restructured and reorganized the Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730–774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The 2003 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

intermediate consignee, ultimate consignee, or end-user.

5. *Five Violations of 15 CFR 764.2(a)—Engaging in Prohibited Conduct—Export Without Licenses:* On or about February 4, 1998, February 26, 1998, April 28, 1998, May 7, 1998, and June 8, 1998, Suntek exported detector log video amplifiers from the United States to the PRC without obtaining the BIS licenses required under Sections 742.4 and 742.5 of the Regulations.

6. *Five Violations of 15 CFR 764.2(e)—Acting with Knowledge—Exporting Without Licenses:* In connection with the five exports of detector log video amplifiers set forth in subparagraph 5. above, Suntek sold or transferred with knowledge that the licenses were required for the exports and that the required licenses were not obtained.

BIS and Suntek having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me; It is therefore ordered:

*First,* that a civil penalty of $275,000 is assessed against Suntek, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

*Second,* that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Suntek will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

*Third,* for a period 20 years from the date of entry of the Order, Suntek Microwave, Inc., 8698 Thorton Avenue, Newark, California 94560, its successors and assigns, and when acting for or on behalf of Suntek, its officers, representatives, agents, or employees ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Fourth,* that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Fifth,* that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

*Sixth,* that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

*Seventh,* that, as authorized by Section 766.18(c) of the Regulations, the civil penalty set forth above shall be suspended in its entirety for one year from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, Suntek has committed no violation of the Act or any regulation, order or license issued thereunder.

*Eighth,* that the charging letter, the Settlement Agreement, and this Order, in addition to the record of the case, shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 6th day of May 2004.

**Julie L. Myers,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 04–10767 Filed 5–11–04; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–580–836)**

### Certain Cut–to-Length Carbon–Quality Steel Plate Products from the Republic of Korea: Final Results and Rescission in Part of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results and rescission in part of antidumping duty administrative review.

**SUMMARY:** On November 6, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut–to-length carbon–quality steel plate products (steel plate) from the Republic of Korea (Korea). The review covers steel plate exported to the United States by Dongkuk Steel Mill Co., Ltd. (DSM) during the period from February 1, 2002 through January 31, 2003. We provided interested parties with an opportunity to comment on the preliminary results of review. After analyzing the comments

received, we have made no changes in the margin calculation. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled, "Final Results of Review."

**EFFECTIVE DATE:** May 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jeff Pedersen or Howard Smith, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2769 or (202) 482–5193, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 6, 2003, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on steel plate from Korea. *See Certain Cut–to-Length Carbon–Quality Steel Plate Products From the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 62770 (November 6, 2003) (*Preliminary Results*). In response to the Department's invitation to comment on the *Preliminary Results* of this review, DSM filed a case brief on December 8, 2003. No other interested party filed case or rebuttal briefs.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Scope of the Review**

The products covered by the antidumping duty order are certain hot–rolled carbon–quality steel: (1) Universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut–to-length (not in coils) and without patterns in relief), of iron or non–alloy-quality steel; and (2) flat–rolled products, hot–rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut–to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non–rectangular cross–section where such non–rectangular cross–section is achieved subsequent to the rolling process (*i.e.*, products which have been 'worked after rolling')–for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non–metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non–metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion–resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. The merchandise subject to the order is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

**Period of Review**

The period of review (POR) is February 1, 2002 through January 31, 2003.

**Rescission of Review**

We preliminarily rescinded the review with respect to Korea Iron & Steel Co., Ltd. (KISCO) and Union Steel Manufacturing Co., Ltd. (Union) because they reported that they made no shipments of subject merchandise during the POR. The Department reviewed U.S. Customs and Border Protection (CBP) data, which supports the claims that these companies did not export subject merchandise during the POR. The record evidence demonstrates that KISCO and Union did not export subject merchandise during the POR. We received no comment on this issue. Therefore, in accordance with 19 C.F.R. § 351.213(d)(3) and consistent with Department's practice, we are rescinding this administrative review with respect to KISCO and Union.

**Section 201 Duties**

In the *Preliminary Results*, the Department noted that it had not previously addressed the appropriateness of deducting section 201 duties from U.S. prices. Since the *Preliminary Results*, the Department has determined not to deduct 201 duties from U.S. prices in calculating dumping margins. The reasons for this decision are set forth in *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19154 (April 12, 2004). Consistent with this decision, the Department has not deducted 201 duties from U.S. prices in calculating dumping margins for these final results.

**Analysis of Comments Received**

All issues raised in the case brief submitted by DSM are addressed in the "Issues and Decision Memorandum" from Holly A. Kuga, Acting Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration (*Issues and Decision Memorandum*). The *Issues and Decision Memorandum* is dated concurrently with this notice and is hereby adopted by this notice. A list of the issues which the parties have raised is attached to this notice as an appendix. Parties can

find a complete discussion of all issues raised in this administrative review, and the corresponding recommendations, in the *Issues and Decision Memorandum* which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at "http://ia.ita.doc.gov". The paper copy and the electronic version of the Issues and Decision Memorandum are identical in content.

**Final Results of Review**

We determine that the following weighted–average percentage margin exists for the period February 1, 2002 through January 31, 2003:

| Exporter/Manufacturer | Margin (percent) |
|---|---|
| Dongkuk Steel Mill Co., Ltd. | 0.85 |

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of steel plate from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for DSM will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent review period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by any segment of this proceeding, the cash deposit rate will be the "all others" rate of 0.98 percent, which is the "all others" rate established in the LTFV investigation, adjusted for the export subsidy rate found in the countervailing duty investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Assessment**

The Department will determine, and the CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 C.F.R. § 351.212(b)(1), the Department has calculated an importer–specific assessment rate for merchandise subject to this review. Where the importer–specific assessment rate is above *de minimis*, we will instruct the CBP to assess the calculated assessment rate against the entered customs values of the subject merchandise on each of the importer's entries during the POR. The Department will issue the appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

**Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the full amount of the antidumping and/or countervailing duties reimbursed.

**Administrative Protective Orders**

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 § C.F.R. 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 4, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

**Appendix Issues in Decision Memorandum**

*Comment 1:* Whether Dongkuk Steel Mill Co., Ltd. and Dongkuk Industries Co., Ltd. are affiliated

*Comment 2:* Whether the Department of Commerce should grant Dongkuk Steel Mill Co., Ltd. a constructed export price (CEP) offset

[FR Doc. 04–10773 Filed 5–11–04; 8:45 am]
BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042304B]**

### Endangered and Threatened Species; Take of Anadromous Fish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** Notice is hereby given that NMFS has received an application for incidental take permit 1481 (Permit) from the Idaho Department of Fish and Game (IDFG) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, IDFG's application includes a conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile salmonids associated with otherwise lawful recreational fisheries on non-listed species in the Snake River and its tributaries in the State of Idaho. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit modification application under the National Environmental Policy Act (NEPA). This document serves to notify the public of the availability for comment of the permit modification application and the associated draft EA before a final decision on whether to issue a Finding of No Significant Impact is made by NMFS. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

**DATES:** Written comments on the draft EA must be received no later than 5 p.m. Pacific daylight time on May 27, 2004.

**ADDRESSES:** Written comments and requests for copies of the draft EA should be addressed to Herb Pollard, Salmon Recovery Division, 10215 W. Emerald, Suite 180, Boise, ID 83704, or faxed to (208) 378–5699. Comments on this draft EA may be submitted by e-mail. The mailbox address for providing e-mail comments is *Permit1481.nwr@noaa.gov*. Include in the subject line the following document

identifier: "Permit 1481 assessment". The documents will also be available on the Internet at *www.nwr.noaa.gov*. Comments may also be submitted electronically through the Federal e-Rulemaking portal: *www.regulations.gov*. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (208) 378–5614.

**FOR FURTHER INFORMATION CONTACT:** Herb Pollard, Boise, ID, at phone number (208) 378–5614 or e-mail: *herbert.pollard@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** This notice is relevant to the Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), Snake River fall-run chinook salmon (*O. tshawytscha*), Snake River sockeye salmon (*O. nerka*), and Snake River steelhead (*O. mykiss*) ESUs. The proposed permit will renew and replace permit 1233 which will expire on December 31, 2004. The duration of the proposed Permit and Plan is 5 years, expiring on May 31, 2008.

**Background**

On May 26, 2000, NMFS issued permit 1233 to the State of Idaho to conduct recreational fisheries managed by IDFG during 2000 through 2004 on non-listed species in the Snake River and its tributaries in the State of Idaho. Permit 1233 authorizes IDFG an incidental take of adult and juvenile, threatened, naturally produced Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), adult and juvenile, threatened, naturally produced Snake River fall chinook salmon (*O. tshawytscha*), and adult and juvenile, threatened, naturally produced Snake River sockeye salmon (*O. nerka*) in recreational fisheries managed by the State of Idaho.

IDFG requests a new permit to modify timing of currently authorized fisheries, to expand currently authorized fishing areas, and to apply an abundance-based sliding scale to incidental take limits for the fisheries. The fishery area in the Salmon River would be increased from the current boundaries of the mouth of Hammer Creek 30 miles (48.2803 km) upstream to the mouth of the Little Salmon River, to include the area from the mouth of the Salmon River upstream approximately 120 miles (193.121 km) to the mouth of the South Fork Salmon River. IDFG also requests that a sliding scale of harvest impacts, based on the combined return of listed spring and summer run chinook salmon counted at Lower Granite Dam be applied to the allowable incidental take of adult, threatened, Snake River spring/summer chinook salmon associated with the authorized fisheries. The proposed permit is the fourth in a series of permits (Permit 844, 1993–1998; Permit 1150, 1999; and Permit 1233, 2000–2004 preceded this application) which have provided ESA authorization for recreational fishing activities that may incidentally take listed Snake River salmon and steelhead.

In its Plan, IDFG is proposing to limit state recreational fisheries such that the incidental impacts on ESA-listed salmonids will be minimized. Three alternatives for the IDFG fisheries are provided in the Plan: (1) The no action alternative; (2) the proposed conservation plan alternative (based on continuing fisheries at levels similar to those permitted since 1995); and (3) historical fishing levels.

**Environmental Assessment/Finding of No Significant Impact**

The EA package includes a draft EA evaluating whether the potential effects of issuing the new incidental take permit to replace the existing permit and whether such issuance is a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. Three Federal action alternatives have been analyzed in the draft EA: (1) The no action alternative; (2) issue a permit with conditions; and (3) issue a permit without conditions. NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. NMFS expects to take action on the ESA section 10(a)(1)(B) submittal received from the applicant. Therefore, NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

This notice is provided pursuant to section 10(c) of the ESA and the NEPA regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed anadromous salmonids under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 15–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: May 7, 2004.

**Phil Williams,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04–10787 Filed 5–11–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042304A]**

### Notice of Intent to Conduct Public Scoping and Prepare an Environmental Impact Statement Related to Two Joint State and Tribal Resource Management Plans for Puget Sound Region Hatchery Programs

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that NMFS intends to gather information necessary to prepare an Environmental Impact Statement (EIS). The EIS will identify effects on the human environment that may potentially result from implementation of two hatchery Resource Management Plans jointly proposed by the Washington Department of Fish and Wildlife and the Puget Sound Treaty Tribes (referred to as the co-managers) for NMFS evaluation and determination under the Endangered Species Act for threatened salmon. The Resource Management Plans are the proposed framework through which the co-managers would jointly manage Puget Sound region hatchery programs rearing steelhead and chinook, coho, pink, sockeye, and chum salmon while meeting conservation requirements specified under the Endangered Species Act (ESA).

NMFS provides this notice to (1) advise other agencies and the public of our intentions and, (2) obtain suggestions and information on the scope of issues to include in the EIS.

**DATES:** Written scoping comments are encouraged, and should be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on July 12, 2004. NMFS will hold four public scoping

meetings. Each meeting will begin at 6 p.m. with a half-hour open house to accommodate informal discussion; presentations will begin at 6:30 p.m.

The meeting dates and locations are:

*June 7, 2004, 6 - 8:30 p.m.*, Public Utility District No. 1 of Skagit County, 1415 Freeway Drive, Mount Vernon, WA.

*June 8, 2004, 6 - 8:30 p.m.*, NOAA Office, 7600 Sand Point Way N.E., Building 9 Auditorium, Seattle, WA.

*June 14, 2004, 6 - 8:30 p.m.*, Mary E. Theler Community Center, 2871 NE State Route 3, Belfair, WA.

*June 15, 2004, 6 - 8:30 p.m.*, Jefferson County Public Library, 620 Cedar Avenue, Port Hadlock, WA.

**ADDRESSES:** Address comments and requests for information related to preparation of the EIS, or requests to be added to the mailing list for this project, to Allyson Ouzts, NMFS, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232; facsimile (503) 872–2737. Comments may be submitted by e-mail to the following address: *PShatcheryEIS.nwr@noaa.gov*. In the subject line of the e-mail, include the document identifier: Puget Sound Region Hatchery EIS. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Allyson Ouzts, NMFS, by phone at (503) 736–4736. In addition, further information regarding this project, including the co-managers' Resource Management Plans and their associated HGMPs may be found at: *www.nwr.noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Species Listed in This Notice**

The following species and Evolutionarily Significant Units (ESUs) under NMFS jurisdiction potentially would be affected by the proposed action:

Puget Sound chinook salmon (*Oncorhynchus tshawytscha*)

Hood Canal summer chum salmon (*O. keta*)

Steller sea-lions (*Eumetopias jubatus*).

Listed species regulated by the United States Fish and Wildlife Service that may be affected by the proposed action include bull trout (*Salvelinus confluentus*), bald eagles (*Haliaeetus leucocephalus*), brown pelicans (*Pelecanus occidentalis*), marbled murrelets (*Brachyramphus marmoratus marmoratus*), and Northern spotted owls (*Strix occidentalis caurina*).

**Background**

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. According to NMFS' NEPA environmental review procedures (NAO–216.6), NMFS' action of evaluating the co-managers' Resource Management Plans for ESA compliance is a major Federal action subject to environmental review under NEPA. Therefore, NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and the associated impacts of any alternatives.

The ESA contains several sections that set the foundation for managing listed species. Section 9(a)(1) of the ESA makes it illegal for any person subject to United States jurisdiction to "take" ESA listed Pacific salmon without authorization from NMFS. The term "take" is defined under the ESA as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). NMFS' definition of harm includes significant habitat modification or degradation where it kills or injures fish or wildlife by significantly impairing essential behavioral patterns, which include breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

Section 4(d) of the ESA discusses the treatment of species listed as threatened. It states that, whenever a species is listed as threatened, the Secretary "shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species." Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9.

In 2000, NMFS applied the ESA section 9 take prohibitions to several threatened salmonid species. However, NMFS also provided some exceptions to the application of these section 9 take prohibitions. These exceptions are referred to as 4(d) limits; they specify categories of activities to which section 9 take prohibitions may not apply when activities contribute to conserving listed salmonids or are governed by programs that adequately limit impacts on listed salmonids.

Under Limit 6 of the 4(d) Rule, State and Tribal governments conducting jointly-managed hatchery or fishery activities would not be subject to the ESA section 9 take prohibitions provided that activities are implemented under a Resource Management Plan that meets the requirements of Limit 6. For NMFS to determine that a Resource Management Plan meets the requirements of Limit 6, the plan must clearly state its intended scope and area of impact and define management objectives consistent with the criteria referenced in Limit 6 of the 4(d) rule.

The co-managers have jointly submitted to NMFS two Resource Management Plans for Puget Sound region hatcheries. One plan describes hatchery programs that produce chinook salmon. The other plan describes hatchery programs that produce steelhead, and coho, sockeye, pink, and chum salmon. Appended to the overarching Resource Management Plans are 117 individual Hatchery and Genetic Management Plans (HGMPs) for each hatchery program. The HGMPs describe each hatchery program in more detail, including specific measures proposed by the co-managers to minimize the risk of adversely affecting Puget Sound chinook salmon and Hood Canal summer chum salmon. NMFS listed both salmon species as threatened in March 1999 (64 FR 14308). The Puget Sound chinook salmon Evolutionarily Significant Unit (ESU; NMFS' application of distinct population segment to salmon) includes all naturally spawned spring, summer, and fall runs of chinook salmon in the Puget Sound region from the North Fork Nooksack River, extending into south Puget Sound, Hood Canal, and the eastern Strait of Juan de Fuca, including the Elwha River on the Olympic Peninsula. This ESU is located in portions of Clallam, Island, King, Kitsap, Jefferson, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom Counties in Washington State. The Hood Canal summer chum salmon ESU includes all naturally spawned summer-run chum in tributaries to Hood Canal and Discovery, Sequim, and Dungeness Bays in the eastern Strait of Juan de Fuca. This ESU is located in portions of Clallam, Jefferson, Kitsap, and Mason Counties of Washington State.

NMFS will conduct an environmental review of the Resource Management Plans and prepare an EIS. The EIS will consider potential impacts on listed and non-listed species and their habitats, water quality and quantity, socioeconomics, and environmental justice. The EIS could also include information regarding potential impacts on other components of the human environment, including air quality, transportation, and cultural resources.

NMFS will rigorously explore and objectively evaluate a full range of

reasonable alternatives in the EIS including the proposed action (implementation of the co-managers' Resource Management Plans) and a No Action alternative. Additional alternatives could include at least the following: (1) a decrease in artificial production in selected programs that have a primary goal of augmenting fisheries, and (2) an increase in artificial production in selected programs that have a primary goal of augmenting fisheries.

Comments and suggestions are invited from all interested parties to ensure that the EIS considers the full range of related issues and alternatives to the proposed action. NMFS requests that comments be as specific as possible. In particular, NMFS requests information regarding: other possible alternatives; the direct, indirect, and cumulative impacts that implementation of the proposed Resource Management Plans could have on endangered and threatened species and their communities and habitats; potential adaptive management and/or monitoring provisions; funding issues; baseline environmental conditions in Clallam, Island, King, Kitsap, Jefferson, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom Counties; other plans or projects that might be relevant to this proposed project; and potential methods to minimize and mitigate for impacts.

Written comments concerning the proposed action and its environmental review should be directed to NMFS as described above (see **ADDRESSES**). All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. Questions may be directed to Allyson Ouzts with NMFS at (503) 736–4736.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500 parts 1508), and other appropriate Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations.

Dated: May 7, 2004.

**Phil Williams,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04–10788 Filed 5–11–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 041604B]**

### Endangered Species; File No. 1438

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Dr. Thane Wibbels, Department of Biology, University of Alabama at Birmingham, Birmingham, AL 35294–1170 has been issued a permit to take Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), and green (*Chelonia mydas*) sea turtles for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay or Jennifer Skidmore, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On June 16, 2003 notice was published in the **Federal Register** (68 FR 35630) that a request for a scientific research permit to take loggerhead, Kemp's ridley and green sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit holder will utilize tangle net methodology combined with observational surveys from boats to study sea turtles in the estuarine systems of Alabama state waters from Grand Bay to Perdido Bay. The purpose of the research is to provide a basic understanding of the abundance, location, and movement of sea turtles within these estuarine ecosystems. This research will help resource managers develop optimal management strategies for these estuaries in order to conserve and protect sea turtles and their habitat. The permit holder will take 30 Kemp's ridley, 30 loggerhead, and 30 green sea turtles annually. Turtles will be captured with a 9.9 inch (25 cm) mesh tangle net that is 731.7 feet (223 m) long by 19.7 feet (6 m) deep. Turtles will be measured, weighed, flipper tagged, blood sampled and released. A subset of five loggerhead and five Kemp's ridley sea turtles will be tagged with a sonic or satellite transmitter. The duration of this permit is 5 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 6, 2004.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04–10784 Filed 5–11–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 041904B]**

### Endangered Species; File No. 1295

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit amendment.

**SUMMARY:** Notice is hereby given that the NMFS Northeast Fishery Science Center (Responsible Official- Dr. John Boreman) has been issued a modification to scientific research Permit No. 1295.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay or Ruth Johnson, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On February 5, 2004, notice was published in the **Federal Register** (69 FR 5508)

that a modification of Permit No. 1295, issued June 4, 2001 (66 FR 29934), had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The modification authorizes the NEFSC (1) to conduct research designed to develop and test methods to reduce incidental bycatch of sea turtles that occurs in a commercial pound net fishery (2) to sample sea turtles captured during research designed to develop and test methods to reduce incidental bycatch of these species that occurs in scallop drag fisheries, and (3) to sample sea turtles captured during the NEFSC's biennial shark longline surveys. The modification would authorize an additional take of 113 loggerhead (*Caretta caretta*), 2 green (*Chelonia mydas*), 40 Kemp's Ridley (*Lepidochelys kempii*) and 2 leatherback (*Dermochelys coriacea*) sea turtles annually during the remaining 2 years of the existing permit. The research will be conducted in the shelf waters of the Atlantic Ocean from Florida to the Gulf of Maine. Up to 2 loggerhead and 3 Kemp's Ridley sea turtle interactions are expected to result in lethal takes annually.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 6, 2004.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04–10785 Filed 5–11–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042804A]**

### Endangered Species; File No. 1245

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit modification.

**SUMMARY:** Notice is hereby given that J. David Whitaker, South Carolina Department of Natural Resources, P.O. Box 12559, Charleston, South Carolina 29422–2559, has been issued a modification to scientific research Permit No. 1245.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and,

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Jefferies or Carrie Hubard, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On November 13, 2003, notice was published in the **Federal Register** (68 FR 64320) that modification of Permit No. 1245, issued May 19, 2000 (65 FR 36666), had been requested by the above-named individual. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1245 authorizes the permit holder to capture, handle, flipper and PIT tag, blood and tissue sample, perform ultrasound and release 350 loggerhead (*Caretta caretta*), 50 Kemp's ridley (*Lepidochelys kempii*), 10 green (*Chelonia mydas*), 5 hawksbill (*Eretmochelys imbricata*) and 3 leatherback (*Dermochelys coriacea*) turtles along the Southeast United States coastline. The modification will authorize the researchers to satellite tag 9 loggerhead turtles and acoustic tag 24 loggerhead turtles in order to begin to determine feeding site fidelity and migratory patterns of juvenile loggerhead sea turtles along the South Carolina coastline. This modification will be authorized for the duration of the Permit which expires on October 31, 2005.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 6, 2004.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04–10786 Filed 5–11–04; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### Technology Administration

### National Medal of Technology Nomination Evaluation Committee, Notice of Charter Renewal; Renewal of the President's National Medal of Technology Nomination Evaluation Committee Charter

**AGENCY:** Technology Administration, Department of Commerce.

**ACTION:** Notice of the renewal of the National Medal of Technology Nomination Evaluation Committee Charter.

**SUMMARY:** Please note that the Secretary of Commerce, with the concurrence of the General Services Administration, has renewed the Charter for the National Medal of Technology Nomination Evaluation Committee on April 12, 2004. It has been determined that the Committee is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Mildred Porter, Director and Designated Federal Official, National Medal of Technology, Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Herbert C. Hoover Building, Room 4843, Washington, DC 20230, phone: 202/482–5572; e-mail: *NMT@technology.gov*.

Dated: May 3, 2004.

**Mildred Porter,**

*Director and Designated Federal Official, National Medal of Technology.*

[FR Doc. 04–10712 Filed 5–11–04; 8:45 am]

BILLING CODE 3510–18–P

## DEPARTMENT OF COMMERCE

### Technology Administration

**RIN 0692–AA08**

### National Medal of Technology's Call for Nominations 2005

**AGENCY:** Technology Administration, Department of Commerce.

**ACTION:** Announcement: call for nominations for the National Medal of Technology 2005.

**SUMMARY:** The Department of Commerce's Technology Administration

is accepting nominations for its National Medal of Technology (NMT) 2005 program.

Established by Congress in 1980, the President of the United States awards the National Medal of Technology annually to our Nation's leading innovators. If you know of a candidate who has made an outstanding contribution in technology, obtain a nomination form from: *http://www.technology.gov/medal.*

**DATES:** The deadline for submission of an application is July 28, 2004.

**ADDRESSES:** The NMT Nomination form for the year 2005 can be obtained by visiting the Web site at *http://www.technology.gov/medal.* Please return the completed application to Mildred Porter, Director of the NMT program, at: *NMT@technology.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mildred Porter, Director, at *NMT@technology.gov* or call 202/482–5572.

**SUPPLEMENTARY INFORMATION:** The National Medal of Technology is the highest honor awarded by the President of the United States to America's leading innovators. Enacted by Congress in 1980, the Medal of Technology was first awarded in 1985. The Medal is given annually to individuals, teams, or companies who have improved the American economy and quality of life by their outstanding contributions through technology.

The primary purpose of the National Medal of Technology is to recognize American innovators whose vision, creativity, and brilliance in moving ideas to market have had a profound and lasting impact on our economy and way of life. The Medal highlights the national importance of fostering technological innovation based upon solid science, resulting in commercially successful products and services.

Dated: May 3, 2004.

**Ben H. Wu,**

*Deputy Under Secretary for Technology, Technology Administration.*

[FR Doc. 04–10711 Filed 5–11–04; 8:45 am]

**BILLING CODE 3510–18–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Amend Collection 3038–0009, Large Trader Reports

**AGENCY:** Commodity Futures Trading Commission

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission ("the Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), *44 U.S.C. 3501 et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

**DATES:** Comments must be submitted on or before July 12, 2004.

**ADDRESSES:** Comments may be mailed to Gary Martinaitis, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Gary Martinaitis, (202) 418–5209; FAX (202) 418–5527; e-mail: *gmartinaitis@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, *44 U.S.C. 3506(c)(2)(A),* requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

**Large Trader Reports, OMB Control No. 3038–0009—Amendment**

Parts 15 through 21 of the commission's regulations under the Commodity Exchange Act (Act) require large trader reports from clearing members, futures commission merchants, and foreign brokers and traders. These rules are designed to provide the Commission with information to effectively conduct its market surveillance program, which includes the detection and prevention of price manipulation and enforcement of speculative position limits.

The Commission estimates the burden of the of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| Annual number of respondents | Frequency of response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| 2,950 | Periodically | 63,300 | .29 | 18,592 |

Dated: May 6, 2004.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04–10765 Filed 5–11–04; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of the Air Force; Acceptance of Group Application Under P.L. 95–202 and Department of Defense Directive (DODD) 1000.20

U.S. Civil Servants on Temporary Duty to Long BINH, Republic of Vietnam, From About April 4, 1972, to About April 27, 1972, to Design a Commercial Carrier Commodity Tariff and Shipment Control System Under the provisions of Section 401, Public Law 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of a group know as: U.S. Civil Servants on Temporary Duty at Long Binh, Republic of Vietnam, From about April 4, 1972 to about April 27, 1972, to Design a Commercial Carrier Commodity Tariff and Shipment Control System.

Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE–Wing, 3rd Floor, Andrews AFB, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 04–10722 Filed 5–11–04; 8:45 am]

BILLING CODE 5001–05–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### US Air Force Academy Board of Visitors Meeting

Pursuant to Section 9355, Title 10, United States Code, the U.S. Air Force Academy Board of Visitors will meet at the U.S. Air Force Academy, Colorado Springs, Colorado, 14–15 May 2004. The purpose of the meeting is to consider the morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy. A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in Paragraphs (2), (6), and Subparagraph (9)(B) of Subsection (c) of Section 552b, Title 5, United States Code. The determination to close certain sessions is based on the consideration that portions of the briefings and discussion will relate solely to the internal personnel rules and practices of the Board of Visitors or the Academy; involve information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or involve discussions of information the premature disclosure of which would be likely to frustrate implementation of future agency action. Meeting sessions will be held in Fairchild Hall.

For further information, contact Lieutenant Colonel Tom Joyce, Military Assistant, Office of the Deputy Assistant Secretary of the Air Force (Force Management and Personnel), SAF/MRM, 1660 Air Force Pentagon, Washington, DC 20330–1660, (703) 693–9765.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 04–10721 Filed 5–11–04; 8:45 am]

BILLING CODE 5001–05–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 11, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 5, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement.

*Title:* Performance Report—Training Personnel for the Education of Individuals with Disabilities Education Act (IDEA).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions (primary).

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 450.

*Burden Hours:* 1,800.

*Abstract:* This package contains instructions and the form necessary for grantees and contractors supported under Training Personnel for the Education of Individuals, CFDA No. 84.325. Data are obtained from grantees and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2473. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, 9th Floor, Washington, DC 20202. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Shelia Carey at her e-mail address *SheliaCarey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–10724 Filed 5–11–04; 8:45 am]
BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### The Central Valley Project, the California-Oregon Transmission Project, and the Pacific Alternating Current Intertie

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of proposed power, transmission, and ancillary services rates.

**SUMMARY:** The Western Area Power Administration (Western) is proposing new rates for ancillary, Western power, the Central Valley Project (CVP) transmission, the California-Oregon Transmission Project (COTP) transmission, and the Pacific Alternating Current Intertie (PACI) transmission services. PACI transmission is a new service. The current rates for existing services expire December 31, 2004, which coincides with the expiration of the current CVP marketing plan. The CVP 2004 Power Marketing Plan goes into effect January 1, 2005. The proposed rates will apply under the 2004 Power Marketing Plan.

The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay required investment within the allowable time period. Rate impacts are detailed in a rate brochure available to all interested parties. The proposed new rates are scheduled to go into effect on January 1, 2005, and will remain in effect through September 30, 2009. This **Federal Register** notice initiates the public process to replace the existing approved rates that expire December 31, 2004.

**DATES:** The consultation and comment period will begin on the date of publication of the **Federal Register** notice and will end August 10, 2004. Western will present a detailed explanation of the proposed rates at a public information forum. The public information forum date is: May 18, 2004, 1 p.m. PDT, Folsom, CA.

Western will accept oral and written comments at a public comment forum. The public comment forum date is: June 17, 2004, 1 p.m. PDT, Folsom, CA.

Western will accept written comments anytime during the consultation and comment period.

**ADDRESSES:** Send written comments to Ms. Debbie R. Dietz, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, e-mail *ddietz@wapa.gov*. Western will accept written comments anytime during the consultation and comment period. Western will post comments received within the consultation and comment period on Western's external Web site at http://*www.wapa.gov/sn/initiatives/post2004/rates/*. Western must receive written comments by the end of the consultation and comment period to ensure consideration in Western's decision process.

The public information and public comment forum location is: Folsom Community Center, 52 Natoma Street, Folsom, CA.

**FOR FURTHER INFORMATION CONTACT:** Ms. Debbie Dietz, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4453, e-mail ddietz@wapa.gov.

**SUPPLEMENTARY INFORMATION:** This **Federal Register** notice initiates the public process to replace the existing rates that expire December 31, 2004. Western will estimate the power revenue requirement for January through September 2005 prior to January 1, 2005. Thereafter, an annual power revenue requirement will be estimated prior to the start of each fiscal year (FY). The power revenue requirement includes operation and maintenance (O&M) expenses, purchased power for project use and first preference customers' loads, interest and other expenses (including any other statutorily required costs or charges), and investment repayment for the CVP and the Washoe Project annual power revenue requirement that remains after project use loads are met. In addition, the annual power revenue requirement includes any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule approved or accepted by the Federal Energy Regulatory Commission (Commission) or other regulatory body, and any charges or credits from the Host Control Area (HCA). To the extent possible, these charges or credits applied to Western will be passed through directly to the appropriate customer in the same manner Western is charged or credited. If the Commission or other regulatory body charges or credits, or the HCA charges or credits cannot be passed through to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through as part of the power revenue requirement. Revenues from project use, transmission, ancillary services, and other services are applied to the power revenue requirement, and the remainder is collected from Base Resource and first preference customers.

Under the 2004 Power Marketing Plan, each preference customer (except first preference customers) that has signed a Base Resource contract is a Base Resource customer and is allocated a percentage of the Base Resource. Base Resource is defined in the 2004 Power Marketing Plan as CVP and Washoe Project power output and power purchase contracts extending beyond 2004 determined by Western to be available for marketing, after meeting the requirements of project use and first preference customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

The CVP has a unique type of preference customer called a first preference customer. A first preference customer is defined in the 2004 Power Marketing Plan as a preference customer and/or a preference entity (an entity qualified to use, but not using, preference power) within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones project provisions of the Flood Control Act of 1962 (76 Stat.1173, 1191–1192).

#### Proposed Rate Formula for First Preference Customer Power

To have a consistent billing process for Base Resource and first preference customers, before the start of each FY, a percentage will be developed for each first preference customer based on the following formula:

$$\text{First Preference customer's \%} = \frac{\text{FP Customer load}}{\text{Gen} + \text{Power Purchases} - \text{Project Use}}$$

Where:
FP Customer load = A first preference customer's forecasted annual load in megawatthours (MWh).
Gen = The forecasted annual CVP and Washoe generation (MWh).
Power Purchases = Power purchased for project use and first preference loads (MWh).
Project Use = The forecasted annual project use load (MWh).

For January through September 2005, the same formula will be used with data for the 9-month period instead of annual data.

During March of each year (except March 2005), each first preference customer's percentage will be reviewed by Western. The review will take into account the actual and estimated current FY data used in the first preference customer's percentage formula. If Western's review results in a change in a first preference customer's percentage of more than one-half of 1 percent, the percentage will be revised for that first preference customer for the remainder of the current FY. The review will not occur in March 2005 because the 2004 Power Marketing Plan will have been in effect for a very short period of time.

Each first preference customer's monthly charges are determined by the following formula: First preference customer's monthly costs = (All first preference customers' share of 6-month power revenue requirement divided by 6) times the first preference customer's percentage.

The first preference customers' share of the annual power revenue requirement is determined by summing all the first preference customers' percentages and multiplying that sum by the annual power revenue requirement. Starting with FY 06, the first preference customers' share of the annual power revenue requirement is divided into two 6-month revenue requirements. The first 6-month revenue requirement will be collected from October through March and the second 6-month revenue requirement will be collected from April through September. The estimated April through September power revenue requirement will be reviewed by Western in March (with the exception of March 2005). Western's review will analyze financial data relating to the power revenue requirement for October through February, to the extent it is available, as well as forecasted data for March through September. If, as a result of Western's review, the power revenue requirement changes by $5 million or more, the April through September power revenue requirement will be revised.

After the first preference customers' percentages have been calculated for January through September 2005, their share of the power revenue requirement will be determined and divided by nine to calculate the monthly first preference customers' revenue requirement.

**Proposed Rate Formula for Base Resource**

Base Resource customer's monthly cost = Base Resource customer's percentage times the Base Resource monthly revenue requirement.

A customer's Base Resource percentage may be adjusted as provided for in their contract; e.g., participation in the exchange program.

After the first preference customers' share of the annual power revenue requirement has been determined, the remainder of the annual power revenue requirement is recovered from the Base Resource customers (Base Resource revenue requirement). The estimated annual Base Resource revenue requirement will be collected in two 6-month periods; 25 percent will be collected from October through March and 75 percent will be collected from April through September. Allocating the Base Resource revenue requirement in this manner more closely aligns the Base Resource revenue requirement with the Base Resource available during the two 6-month periods. A Base Resource monthly revenue requirement is calculated by dividing the Base Resource estimated 6-month revenue requirement by 6 months. The estimated April through September Base Resource revenue requirement will be reviewed by Western in March. Western's review will analyze financial data relating to the Base Resource revenue requirement for October through February, to the extent it is available, as well as forecasted data for March through September. If, as a result of Western's review, there is a change in the Base Resource revenue requirement of $5 million or more, the April through September Base Resource revenue requirement will be revised. A customer's Base Resource costs are independent of the Base Resource received. Base Resource energy not used by any preference customer would be sold, if possible, and the revenues would reduce the Base Resource revenue requirement.

Before January 1, 2005, Western will estimate the power revenue requirement for January through September 2005 and calculate the first preference customers' share. Once the first preference customers' share of the power revenue requirement has been determined, the Base Resource revenue requirement will be allocated 25 percent to the 3-month period, January through March 2005, and 75 percent to the 6-month period, April through September 2005. Western will not review the power revenue requirement, the Base Resource revenue requirement, or the first preference customers' percentages in March 2005, since very limited actual data under the 2004 Power Marketing Plan would be available in March 2005. The estimated January through September 2005 power revenue requirement is $30 million of which the first preference customers' share is 3.7 percent, or $123,333 per month. The estimated January through September 2005 Base Resource revenue requirement is $28,890,000. For January through March 2005, the estimated Base Resource revenue requirement is $2,407,500. For April through September 2005, the estimated Base Resource monthly revenue requirement is $3,611,250. This estimated data is subject to change prior to the rates taking effect. The estimated data for the power revenue requirement, first preference customers' percentages, and the Base Resource Revenue Requirement for January through September 2005 will be finalized by Western on or before December 1, 2004.

**Proposed Rate Formula for Custom Product Power**

All costs associated with custom product power will be recovered through a power rate formula that passes through the cost of the purchase to a specific customer(s). Under the 2004 Power Marketing Plan, custom product power is power supplied by Western to meet a customer's load. Western may make custom product power purchases for a group of customers or for an individual customer. Costs for custom product power purchases that are funded in advance by the customer(s) will be passed through to that customer(s) based on the power scheduled to the customer(s). Custom product power funded in advance that is surplus to the load requirements of the customer(s) will be sold. If the customer(s) fails to have an account available to receive the proceeds from the sale of surplus custom product power, the proceeds are forfeited to Western and will be applied to the custom product power purchase cost for the customer(s).

If the custom product power purchase is funded through appropriations or use of receipts authority, the cost of the custom product power is passed through to the customer(s) that uses the power. Custom product power funded

through appropriations or use of receipts authority that is surplus to the load requirements of the customer(s) will be sold. Proceeds from the sale of surplus custom product power funded through use of receipts or appropriations will be applied to the custom product power purchase cost for the customer(s).

TABLE 1.—COMPARISON OF EXISTING RATES AND PROPOSED RATE FORMULAS FOR WESTERN POWER

| Power service | Existing rate. | Proposed rate formula | Percent change |
|---|---|---|---|
| Contract Rate of Delivery | 30.83 mills/kWh | N/A | N/A. |
| Base Resource & First Preference | N/A | Percent of Annual Power Revenue Requirement. | N/A. |
| Custom Product Power | N/A | Pass-through | N/A. |

The 2004 Power Marketing Plan does not offer the same type of power service that is available under the current power marketing plan. Under the current power marketing plan, a contract rate of delivery allocates an amount of capacity with associated energy to each preference customer, and the customer can take up to that amount of capacity in any hour. The Base Resource and first preference power is primarily hydrogeneration available subject to water conditions and operating constraints. Custom product power is power purchased by Western to meet a customer's load and may include long- and short-term purchases at various rates.

**Proposed Rate Formula for CVP Transmission**

The proposed rate formula for CVP firm transmission includes three components:

*Component 1:*

$$\frac{\text{CVP TRR}}{\text{TTc} + \text{NITSc}}$$

Where:

TRR = Transmission revenue requirement.

TTc = The total transmission capacity under long-term contract between Western and other parties, including point-to-point and existing pre-Open Access Transmission Tariff (pre-OATT) transmission contracts.

NITSc = The coincident peak of network integrated transmission service (NITS) customers at the time of the CVP transmission system peak. For rate design purposes, Western's use of the transmission system to meet its statutory obligations is treated as NITS.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission or other regulatory body accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the CVP transmission rate formula.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the CVP transmission rate formula.

Western will revise the rate resulting from Component 1 of the proposed rate formula based on: (a) Updated financial data available in March of each year; and (b) a change in the numerator or denominator that results in a rate change of at least $0.05 per kilowattmonth (kWmonth). The estimated rate resulting from Component 1 of the proposed rate formula for January through September 2005 is $0.93 per kWmonth. This is a 63-percent increase from the existing rate of $0.57 per kWmonth.

The proposed rate formula for CVP non-firm transmission includes the same three components used in the proposed rate formula for CVP firm transmission. The estimated rate resulting from Component 1 of the proposed rate formula for CVP non-firm transmission service for January through September 2005 is 1.30 mills/kilowatthour (kWh). This rate is a 30-percent increase from the existing rate of 1.00 mill/kWh. The percentage increase for the CVP non-firm transmission estimated rates is smaller than the percentage increase for CVP firm transmission estimated rates because the existing CVP non-firm transmission rate was rounded up to 1.00 mill/kWh. The increase in CVP transmission rates is primarily due to an increase in O&M costs and a change in Western's use of the CVP transmission system under the 2004 Power Marketing Plan. Under the current power marketing plan, Western is reserving transmission capacity based on the maximum output of directly connected CVP generating plants under normal operating conditions. Under the 2004 Power Marketing Plan, for rate design purposes, Western is treated as taking CVP NITS. The rates resulting from Component 1 of the proposed rate formula may be discounted for short-term sales.

The proposed rate formula for CVP transmission service is based on a revenue requirement that recovers: (1) The CVP transmission system costs for facilities associated with providing transmission service; (2) the nonfacility costs allocated to transmission service; (3) CVP generation costs for providing reactive supply and voltage control; (4) the pass through of the Commission or other regulatory body accepted or approved charges or credits; (5) the pass through of HCA charges or credits; (6) any other statutorily required costs or charges; and (7) any other costs associated with transmission service, including uncollectible debt. Revenues from the sales of short-term transmission will offset the TRR.

Component 1 of the proposed rate formula includes Western's cost for transmission scheduling, system control and dispatch service, and reactive supply and voltage control associated with the transmission service. The proposed rate formula applies to CVP firm point-to-point transmission service and existing CVP firm pre-OATT transmission service. The estimated rates resulting from the proposed rate formula are subject to change prior to the rates taking effect. The rates will be

finalized by Western on or before December 1, 2004.

**Proposed Rate Formula for CVP NITS**

The proposed rate formula for CVP NITS includes three components:

*Component 1:* NITS Customer's monthly costs = NITS customer's load ratio share times one-twelfth of the annual network TRR.

Where:

NITS customer's load ratio share = The NITS customer's hourly load coincident with the monthly CVP transmission system peak minus the coincident peak for all firm CVP (including reserved transmission capacity) transmission service, expressed as a ratio.

Annual network TRR = The total CVP TRR less CVP firm point-to-point and pre-OATT transmission revenues.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the CVP NITS rate formula.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the CVP NITS rate formula.

The proposed rate formula for CVP NITS is based on a revenue requirement that recovers: (1) The CVP transmission system costs for facilities associated with providing transmission service; (2) the nonfacility costs allocated to transmission service; (3) CVP generation costs for providing reactive supply and voltage control; (4) the pass through of Commission or other regulatory body accepted or approved charges or credits; (5) the pass through of HCA charges or credits; (6) any other statutorily required costs or charges; and (7) any other costs associated with transmission service, including uncollectible debt. For January through September 2005, the estimated monthly NITS revenue requirement is $923,932.

The proposed rate formula includes Western's cost for transmission scheduling, system control and dispatch service, and reactive supply and voltage control associated with the CVP NITS. The proposed rate formula applies to CVP NITS. The estimated NITS monthly revenue requirement, resulting from the proposed rate formula, may change prior to the rates taking effect based on the final CVP TRR. The NITS monthly revenue requirement will be finalized by Western on or before December 1, 2004.

**Proposed Rate for Third-Party Transmission**

The proposed rate formula for third-party transmission includes three components:

*Component 1:* Western will directly pass through to the requesting customer any transmission service costs it incurs for using a third-party's transmission system. Rates under this schedule are proposed to be automatically adjusted as third-party transmission costs are adjusted.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission or other regulatory body accepted or approved charges or credits apply to the service to which this rate methodology applies.

Western will pass through directly to the appropriate customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited, to the extent possible.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western is charged or credited, to the extent possible.

**Proposed Rate Formula for COTP Point-to-Point Transmission**

The proposed rate formula for COTP transmission includes three components:

*Component 1:*

$$\text{COTP TRR} \over \text{Western's share of COTP seasonal capacity}$$

Component 1 is the ratio of the COTP TRR to Western's share of the COTP seasonal capacity. Western will update the rate resulting from Component 1 at least 15 days before the start of each California-Oregon Intertie (COI) rating season. Seasonal definitions for summer, winter, and spring are June through October, November through March, and April through May, respectively.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the COTP transmission rate formula.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the COTP transmission rate formula.

A comparison of the estimated rates resulting from Component 1 of the proposed rate formula for COTP firm point-to-point transmission service to the existing COTP firm point-to-point transmission service rates are shown in the table below.

TABLE 2.—COMPARISON OF EXISTING RATES TO ESTIMATED RATES FROM COMPONENT 1 OF THE PROPOSED RATE FORMULA FOR COTP FIRM POINT-TO-POINT TRANSMISSION SERVICE

| Season | Existing rate (kWmonth) | Estimated rates from proposed rate formula (kWmonth) | Percent increase |
|---|---|---|---|
| Spring | $0.73 | $1.60 | 119 |
| Summer | 0.53 | 1.59 | 200 |
| Winter | 0.66 | 1.61 | 144 |

The proposed rate formula for COTP non-firm transmission includes the same three components used in the proposed rate formula for COTP firm transmission. A comparison of the estimated rates resulting from Component 1 of the proposed rate formula for COTP non-firm point-to-point transmission service to the existing COTP non-firm point-to-point transmission service rates, are shown in the table below.

TABLE 3.—COMPARISON OF EXISTING TO ESTIMATED RATES FROM COMPONENT 1 OF THE PROPOSED RATE FORMULA FOR COTP NON-FIRM POINT-TO-POINT TRANSMISSION SERVICE

| Season | Existing rate (mill/kWh) | Estimated rate from proposed rate formula (mills/kWh) | Percent increase |
|---|---|---|---|
| Spring | $1.00 | $2.18 | 118 |
| Summer | 0.72 | 2.17 | 201 |
| Winter | 0.91 | 2.22 | 144 |

The estimated firm and non-firm rates from Component 1 of the proposed rate formula change minimally from season to season due to a constant COI rating. The increase in COTP transmission rates is primarily due to a decrease in Western's COTP capacity available for sale. The decrease in capacity occurs because of increased usage by the Department of Energy (DOE) of its statutory entitlement at a rate which recovers only O&M costs.

The proposed rate formula for COTP firm and non-firm point-to-point transmission service is based on a revenue requirement that recovers: (1) The COTP transmission system costs for facilities associated with providing transmission service; (2) the nonfacility costs allocated to transmission service; (3) CVP generation costs for providing reactive supply and voltage control; (4) the pass through of Commission or other regulatory body accepted or approved charges or credits; (5) the pass through of HCA charges or credits; (6) any other statutorily required costs or charges; and (7) any other costs associated with transmission service, including uncollectible debt.

The proposed firm and non-firm rate formula includes Western's cost for transmission scheduling, system control and dispatch service, and reactive supply and voltage control associated with COTP transmission. The proposed rate formula applies to COTP point-to-point transmission service. The rates resulting from Component 1 of the proposed rate formula may be discounted for short-term sales. The estimated rates resulting from the proposed rate formula are subject to change prior to the rates taking effect. The rates resulting from the proposed rate formula for the winter season will be finalized by Western on or before December 15, 2004.

**Proposed Rate Formula for PACI Transmission**

The proposed rate formula for PACI transmission includes three components:

*Component 1:*

$$\frac{\text{PACI TRR}}{\text{Western's PACI Seasonal Capacity}}$$

Component 1 is the ratio of the PACI TRR to Western's share of the PACI seasonal capacity. Western will update the rate resulting from Component 1 at least 15 days before the start of each COI rating season. Seasonal definitions for summer, winter, and spring are June through October, November through March, and April through May, respectively.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the PACI transmission rate formula.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate customer, the charges or credits will be passed through using Component 1 of the PACI transmission rate formula.

The proposed rate formula for PACI non-firm transmission includes the same three components used in the proposed rate formula for PACI firm transmission.

The estimated firm and non-firm rates resulting from Component 1 of the proposed rate formula for PACI firm transmission service are shown in the table below.

TABLE 4.—ESTIMATED RATES FROM COMPONENT 1 OF THE PROPOSED RATE FORMULA FOR PACI TRANSMISSION

| Season | Estimated firm rate (kW month) | Estimated non-firm rate (mill/kWh) |
|---|---|---|
| Spring | $0.22 | 0.31 |
| Summer | 0.22 | 0.31 |
| Winter | 0.22 | 0.31 |

The estimated rates from Component 1 of the proposed rate formula do not change from season to season due to a constant COI rating. There are no existing rates for PACI transmission since it is currently covered under an existing contract. The proposed rate formula for PACI transmission service is based on a revenue requirement that recovers: (1) The PACI transmission system costs for facilities associated with providing transmission service; (2) the nonfacility costs allocated to transmission service; (3) CVP generation costs for providing reactive supply and voltage control; (4) the pass through of Commission or other regulatory body accepted or approved charges or credits; (5) the pass through of HCA charges or credits; (6) any other statutorily required costs or charges; and (7) any other costs associated with transmission service, including uncollectible debt.

The proposed rate formula includes Western's cost for transmission scheduling, system control and dispatch service, and reactive supply and voltage control associated with PACI transmission. The proposed rate formula applies to PACI point-to-point transmission service. The rates resulting from Component 1 of the proposed rate formula may be discounted for short-term sales. The estimated rates resulting from the proposed rate formula are subject to change prior to the rates taking effect. The rates resulting from the proposed rate formula for the winter season will be finalized by Western on or before December 15, 2004.

**Path 15 Transmission Service**

Western intends to turn over operational control of its rights on Path 15 to the California Independent System Operator (CAISO). Transmission service for Western's right on Path 15 must be obtained under the terms and conditions established by the CAISO. Revenues received by Western for wheeling and congestion will be applied against Western's Path 15 TRR. If a significant overcollection occurs, Western will work with the CAISO on the treatment of the overcollection.

**Proposed Rates for Ancillary Services**

Western's costs for providing transmission scheduling, system control and dispatch service, and reactive supply and voltage control are included in the appropriate transmission rate formulas.

**Proposed Rate Formula for Spinning Reserve**

The proposed rate formula for spinning reserve includes three components:

*Component 1:* The Sub Control Area (SCA) spinning reserve monthly revenue requirement will be recovered through a ratio using each SCA customer's spinning reserve requirements. For rate design purposes, Western's merchant function is treated as an SCA customer. Each SCA customer's spinning reserve requirement will be calculated hourly based on 2.5 percent of their maximum demand megawatt (MW) for that hour. A ratio is calculated of each SCA customer's hourly spinning reserve requirements summed for the month to the total of all SCA customers' hourly spinning reserve requirements for the month. This ratio is then applied to the monthly revenue requirement to determine SCA customers' costs for spinning reserve. SCA customers that self-provide spinning reserves will have their hourly spinning reserve requirement adjusted to reflect the self-provision. The penalty for nonperformance by an SCA customer who has committed to self-provision of their share of the SCA spinning reserve requirements will be the greater of actual costs or 150 percent of the market price. Western will revise the revenue requirement used in Component 1 of the proposed rate formula based on: (a) Updated financial data available in March of each year; and (b) a change in the annual revenue requirement of $100,000 or more.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the spinning reserve rate formula.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate customer, the charges or credits will be passed through using Component 1 of the spinning reserve rate formula.

The proposed rate formula for spinning reserve service is based on a revenue requirement that recovers: (1) The CVP generation costs associated with providing spinning reserve service; (2) the nonfacility costs allocated to spinning reserve service; (3) the cost of energy, capacity, or foregone generation that supports spinning reserve service; (4) the pass through of Commission or other regulatory body accepted or approved charges or credits; (5) the pass through of HCA charges or credits; and (6) any other statutorily required costs or charges. For January through September 2005, the estimated monthly revenue requirement is $165,657 per month, which results in a per-unit cost of $3.31 per kWmonth. The existing rate for spinning reserve is $1.35 per kWmonth. The spinning reserve per-unit cost calculated using the proposed rate formula is an increase of 145 percent over the existing rate. The increase is primarily due to purchases needed to support the SCA reserve requirements and increased O&M costs.

The cost for spinning reserve required to firm CVP generation for the current hour and the following hour is included in the power revenue requirement. Spinning reserves surplus to those required to support the SCA and firm CVP generation may be sold. Surplus spinning reserves will be sold at prices consistent with the CAISO markets. Revenues from the sale of surplus spinning reserves will offset the power revenue requirement. The spinning reserve rate formula will apply to SCA customers who contract with Western to provide this service. The estimated revenue requirement resulting from the proposed rate formula is subject to change prior to the rates taking effect. The revenue requirement will be finalized by Western on or before December 1, 2004.

**Proposed Rate Formula for Supplemental (Non-Spinning) Reserve**

The proposed rate formula for non-spinning reserve includes three components:

*Component 1:* The non-spinning reserve monthly revenue requirement will be recovered through a ratio using the individual SCA customer's non-spinning reserve requirement. Each SCA customer's non-spinning reserve requirement will be calculated hourly based on 2.5 percent of their maximum demand (MW) for that hour. A ratio is calculated of each SCA customer's hourly non-spinning reserve requirements summed for the month to the total SCA customers' hourly non-spinning reserve requirements for the month. This ratio is then applied to the monthly revenue requirement to determine the SCA customer's costs for non-spinning reserve. SCA customers that self-provide non-spinning reserves will have their hourly non-spinning reserve requirement adjusted to reflect the self-provision. The penalty for nonperformance by an SCA customer who has committed to self-provision of their share of the SCA non-spinning reserve requirement will be the greater of actual costs or 150 percent of the market price. Western will revise the revenue requirement used in Component 1 of the proposed rate formula based on: (a) Updated financial data available in March of each year; and (b) a change in the annual revenue requirement of $100,000 or more.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission accepted or approved charges or credits to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the non-spinning reserve rate formula.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the non-spinning reserve rate formula.

The proposed rate formula for non-spinning reserve service is based on a revenue requirement that recovers: (1) The CVP generation costs associated with providing non-spinning reserve service; (2) the nonfacility costs allocated to non-spinning reserve service; (3) the cost of energy, capacity, or foregone generation that supports non-spinning reserve service; (4) the pass through of HCA charges or credits; (5) the pass through of Commission or other regulatory body accepted or approved charges or credits; and (6) any other statutorily required costs or charges. For January through September 2005, the estimated monthly revenue requirement is $126,465 per month, which results in a per-unit cost of $2.53 per kWmonth. The existing rate for non-spinning reserve is $1.27 per kWmonth. The non-spinning reserve per-unit cost calculated using the proposed rate formula is an increase of 99 percent over the existing rate. The increase is primarily due to purchases needed to support the SCA reserve requirements and increased O&M costs.

The cost for non-spinning reserves required to firm CVP generation for the current hour and the following hour is included in the power revenue requirement. Non-spinning reserves surplus to those required to support the SCA and firm CVP generation may be sold. Surplus non-spinning reserves will be sold at prices consistent with the CAISO markets. Revenues from the sale of non-spinning reserves will offset the power revenue requirement. The non-spinning reserve rate formula will apply to SCA customers who contract with Western to provide this service. The estimated revenue requirement resulting from the proposed rate formula is subject to change prior to the rates taking effect. The revenue requirement will be finalized by Western on or before December 1, 2004.

**Proposed Rate Formula for Regulation and Frequency Response Service (Regulation)**

The proposed rate formula for Regulation includes three components:

*Component 1:* The Regulation monthly revenue requirement will be recovered through a ratio using the individual SCA customer's regulating capacity requirement. Each SCA customer's regulating capacity requirement will be calculated using the following formula: SCA Customer Regulating Capacity Requirement (total bandwidth) = 2*(.05 * Load change + 5 MW)

Where:

Load change = The absolute value of the largest load change between any two consecutive hours during a calendar year.

For SCA customers with an annual peak load of 30 MW or less, the regulating capacity requirement is deemed to be 2 MW.

A ratio is calculated of each SCA customer's regulating capacity requirement to the total regulating capacity requirement of all SCA customers. This ratio is then applied to the monthly revenue requirement to determine the SCA customer's costs for Regulation. SCA customers that self-provide Regulation will have their regulating capacity requirement adjusted to reflect the self-provision. The penalty for nonperformance by an SCA customer who has committed to self-provision for their regulating capacity requirement will be the greater of actual costs or 150 percent of the market price. Western will revise the revenue requirement used in Component 1 of the proposed rate formula based on: (a) Updated financial data available in March of each year; and (b) a change in the annual revenue requirement of $100,000 or more.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

When possible, Western will pass through directly to the appropriate customer the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited. If the Commission or other regulatory body accepted or approved charges or credits cannot be passed through directly to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the Regulation rate formula.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western

is charged or credited, to the extent possible. If the HCA costs or credits cannot be passed through to the appropriate customer in the same manner Western is charged or credited, the charges or credits will be passed through using Component 1 of the Regulation rate formula.

The revenue requirement includes: (1) The CVP generation costs associated with providing regulation; (2) the nonfacility costs allocated to regulation; (3) the cost of energy, capacity, or foregone generation that supports Regulation; (4) the pass through of HCA charges or credits; (5) the pass through of Commission or other regulatory body accepted or approved charges or credits; and (6) any other statutorily required costs or charges.

For January through September 2005, the estimated monthly revenue requirement is $258,098 per month, which results in a per-unit cost of $6.45 per kWmonth. The existing rate for Regulation is $1.48 per kWmonth. The Regulation per-unit cost calculated using the proposed rate formula is an increase of 336 percent over the existing rate. The increase is primarily due to purchases needed to support the Regulation and increased O&M costs.

The Regulation revenue requirement will be recovered from SCA customers that have contracted with Western for this service. The revenues from Regulation service will be applied to the power revenue requirement. The estimated revenue requirement resulting from the proposed rate formula is subject to change prior to the rates taking effect. The revenue requirement will be finalized by Western on or before December 1, 2004.

**Proposed Rate for Energy Imbalance Service**

The proposed rate formula for energy imbalance service includes three components:

*Component 1:* If there is an hourly average negative deviation (under delivery) outside the bandwidth, the amount of the deviation outside of the bandwidth (MWh) will be charged at the greater of 150 percent of market price or actual cost. If there is an hourly average positive deviation outside the bandwidth, the amount of the deviation outside of the bandwidth (MWh) is lost to the system.

*Component 2:* Any charges or credits associated with the creation, termination, or modification to any tariff, contract, or rate schedule accepted or approved by the Commission or other regulatory body will be passed on to each appropriate customer. The Commission accepted or approved charges or credits apply to the service to which this rate methodology applies.

To the extent possible, Western will pass through directly to the appropriate customer, the Commission or other regulatory body accepted or approved charges or credits in the same manner Western is charged or credited.

*Component 3:* Any charges or credits from the HCA applied to Western for providing this service will be passed through directly to the appropriate customer in the same manner Western is charged or credited, to the extent possible.

The existing rate for energy imbalance is the same as the proposed rate formula with three exceptions. Under the existing rate, deviations are measured as the amount of energy outside the bandwidth. Under the proposed rate formula, deviations outside the bandwidth are energy calculations done on an hourly average basis. Under the existing rate, the charge for deviations (energy) within the bandwidth not returned is the CVP composite rate. Under the proposed rate, there is no financial charge for deviations (energy) within the bandwidth that is not returned. Under the existing rates, the charge for negative deviations (under delivery) outside the bandwidth during on-peak hours is the greater of three times the CVP composite rate or additional costs incurred. During off-peak hours, it is the greater of the CVP composite rate or additional costs incurred. Under the proposed rate, negative deviations (under delivery) outside the bandwidth are charged at the greater of 150 percent of market price or actual cost.

The energy imbalance rate will apply to SCA customers that have contracted with Western for this service. The revenues from energy imbalance service will be applied to the power revenue requirement.

**Change in Revenue Adjustment Clause (RAC) in Existing CVP Firm Power Rate Schedule CV–F10**

Western is proposing a change to the RAC for FY 04. Under the existing CVP Firm Power Rate Schedule CV–F10, a RAC credit for FY 04 would be applied in equal amounts to the nine power bills issued by Western from January through September 2005. Western is proposing to change the RAC to allow Western to make lump sum payments to customers for their share of the FY 04 RAC credit, as opposed to issuing credits in equal amounts to the power bills issued from January through September 2005. This change in the RAC will allow Western more flexibility as it moves to the 2004 Power Marketing Plan. This change will not affect the calculation of the FY 04 RAC or the determination of each customer's share of the FY 04 RAC.

For the October to December 2004 RAC, Western proposes to change the existing process of calculating the RAC and applying the resulting RAC credit or surcharge to the power bills issued from April through September 2005. Western proposes to delay calculation of the October through December 2004 RAC so that any outstanding project use true-ups and any unmet obligations under existing contracts associated with business that occurred prior to January 1, 2005, could be included in the October through December 2004 RAC. This would likely delay the October through December 2004 RAC until sometime in FY 06. Once this data was available, Western would calculate the October through December 2004 RAC using the existing methodology. The resulting RAC credit or surcharge would be allocated among the power customers taking firm power during October through December 2004 under the existing methodology. Western would initiate distribution of the RAC credit or surcharge within 30 days of completing the RAC calculation. If the result was a RAC credit, at Western's discretion, Western would either credit the customers' power bills to the extent possible, or Western would make a lump sum payment to the customers for their share of the RAC. If the result was a RAC surcharge, at Western's discretion, Western could collect the payment in equal installments over 9 months or as a lump sum.

**Legal Authority**

These proposed rates for COTP, PACI, CVP transmission, Western power, and related services are being established pursuant to the DOE Organization Act, (42 U.S.C. 7101–7352); the Reclamation Act of 1902, (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures

for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985 (50 FR 37835).

**Availability of Information**

All brochures, studies, comments, letters, memorandums, or other documents made or kept by Western for developing the proposed rates are available for inspection and copying at the Sierra Nevada Regional Office, located at 114 Parkshore Drive, Folsom, California.

**Regulatory Procedural Requirements**

*Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

*Environmental Compliance*

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR 1500–1508); and DOE NEPA Regulations (10 CFR 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

*Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; so this notice requires no clearance by the Office of Management and Budget.

*Small Business Regulatory Enforcement Fairness Act*

Western has determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: April 29, 2004.

**Michael S. Hacskaylo,**

*Administrator.*

[FR Doc. 04–10776 Filed 5–11–04; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0126; FRL–7357–3]**

## Systems Research and Applications Corporation (SRA); Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to SRA in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Systems Research and Applications Corporation has been awarded multiple contracts to perform work for OPP, and access to this information will enable SRA to fulfill the obligations of the contract.

**DATES:** Systems Research and Applications Corporation will be given access to this information on or before May 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7248; e-mail address: *johnson.erik@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0126. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

**II. Contractor Requirements**

Under Contract No. 68–W–99–38, the purpose of the work assignment is to provide the OPP with the contractor resources needed to support EPA's efforts to conduct risk assessments for its critical/priority systems and applications. The risk assessment will generally be consistent with the methodology developed by Science Application International Corporation. The role of the Contractor is to provide research, analytical, and technical expertise to the Work Assignment Manager (WAM) in fulfilling the goals and objectives of the project.

This contract involves no subcontractors.

The OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with SRA, prohibits use of the information for any purpose not specified in this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, SRA is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to SRA until the requirements in this document have been fully satisfied. Records of information provided to SRA will be maintained by EPA Project Officers for this contract. All information supplied to SRA by EPA for use in connection with this contract will be returned to EPA when SRA has completed its work.

**List of Subjects**

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: April 26, 2004.

**Robert Forrest,**

*Acting Director, Information Resources and Services Division, Office of Pesticide Programs.*

[FR Doc.04 –10454 Filed 5–11–04; 8:45 am]

**[BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0146; FRL–7360–1]**

## FIFRA Scientific Advisory Panel; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review product characterization, human health risk, ecological risk, and insect resistance management (IRM) for *Bacillus thuringiensis* (Bt) cotton products.

**DATES:** The meeting will be held on June 8 to June 10, 2004, from 8:30 a.m. to approximately 5 p.m, eastern daylight time.

*Comments*: For the deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

*Nominations*: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before May 24, 2004.

*Special seating*: Requests for special seating arrangements should be made at least 7 days prior to the meeting.

**ADDRESSES:** The meeting will be held at the Holiday Inn Arlington, 4610 North Fairfax Drive, Arlington, VA 22203. The telephone number for the Holiday Inn Arlington is (703) 243–9800.

*Comments*: Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

*Nominations, requests to present oral comments, and special seating*: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0146 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Paul Lewis, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8450; fax number: 202–564–8382; e-mail addresses: *lewis.paul@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0146. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than late May 2004. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed

in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0146. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID umber OPP–2004–0146. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0146. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0146.

*D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*E. How May I Participate in this Meeting?*

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0146 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be

permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern daylight time, June 2, 2004, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern daylight time, June 2, 2004, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 7 days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting.* The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Individuals nominated should have expertise in one or more of the following areas: Allelgenicity, acute toxicity, product characterization, molecular characterization, ecological toxicity, environmental fate, and exposure assessment. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 24, 2004.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists—experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short-time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–485–02) which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the nominee's financial disclosure form to assess that there are no financial conflicts of interest, the appearance of impartiality and should not have been involved with the development of the documents under consideration (including previous scientific peer review) before the nominee is considered to serve on the FIFRA SAP. The Agency will review all nominations with final selection of ad hoc members being a discretionary function of the Agency. Selected FIFRA SAP members will be hired as a Special Government Employee. FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I. In order to have the collective breadth of experience needed to address the Agency's charge, the Agency anticipates greater than 10 ad hoc scientists will be selected for this meeting.

## II. Background

### *A. Purpose of the FIFRA SAP*

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

### *B. Public Meeting*

The FIFRA SAP will meet to consider and review product characterization, human health risk, ecological risk, and IRM for *Bacillus thuringiensis* products. Dow AgroSciences has submitted an application under section 3 of FIFRA, for full commercial use of their cotton plant-incorporated protectant (PIP), Cry1F/Cry1Ac known as WideStrike. This application was for a stacked PIP (one that contains two or more proteins). Since this stacked PIP contains at least one protein that has never been seen in cotton, it is

important to thoroughly assess the science. The Panel is asked to review the following set of scientific issues being considered by the Agency: Product characterization, human health risk, and ecological risk for WideStrike cotton composed of (*Bacillus thuringiensis* var. aizawai strain PS811 (Cry1F insecticidal protein in cotton and *Bacillus thuringiensis* var. strain HD73 Cry1Ac insecticidal crystal protein in cotton).

In September 2001, the Agency completed a reassessment of the PIP Cry1Ac produced in cotton, known as BollGard cotton. At that time, the Agency required the registrant, Monsanto Company, to submit data on whether alternative host plants for the cotton bollworm assisted in providing an adequate insect refuge to support an IRM plan allowing 95% BollGard cotton and a 5% external, unsprayed structured non-*Bt* cotton refuge. Data were also required on the use of chemical insecticides being used on *Bt* cotton to increase the efficacy of the IRM plan for cotton bollworm, and cotton bollworm reverse migration and its impact. Since that time, the Agency has approved a second Bt cotton product containing both Cry1Ac and Cry2Ab2. These same data requirements were required for this application. This product, known as BollGard II, was granted a full commercial use under section 3 of FIFRA on December 23, 2002. In addition, the Agency is now considering a third PIP for cotton, WideStrike, which contains both Cry1Ac and Cry1F.

This meeting of the FIFRA SAP will also review the scientific issues being considered by the Agency pertaining to IRM of the PIP products BollGard, BollGard II, and WideStrike, including assessing the Agency's review of several specific issues related to cotton bollworm resistance management: (1) Utilization of alternate hosts as natural refuge, (2) insecticidal overspray impacts, and (3) north-south reverse migration. The Panel will be charged with assessing the Agency's assessment of the aforementioned data submitted to support these registrations and completing a report on the assessment. The Agency will use the Panel's recommendations as it considers continuation of the 5% external, unsprayed refuge option for cotton bollworm.

*C. FIFRA SAP Meeting Minutes*

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: May 3, 2004.

**Joseph J. Merenda, Jr.,**

*Director, Office of Science Coordination and Policy.*

[FR Doc. 04–10550 Filed 5–11–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0077; FRL–7356–6]**

## Cycloate; Availability of Risk Assessments (Interim Process)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and environmental fate and effects risk assessments and related documents for the broad-spectrum herbicide cycloate (S-Ethyl cyclohexylethylthiocarbamate), registered for the control of both annual grasses and broadleaf weeds on garden beets, spinach, sugar beets, and proposed for Swiss chard. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information.

**DATES:** Comments, identified by the docket identification (ID) number OPP–2004–0077, must be received on or before July 12, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Carmen Rodia, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–8041; e-mail address: *rodia.carmen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for cycloate, including environmental, human health and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0077. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket and to access those documents in the public

docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

## II. How Can I Respond to this Action?

### *A. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0077. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0077. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0077.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501, Attention: Docket ID Number OPP–2004–0077. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

### *B. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be

included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*C. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

**III. What Action is the Agency Taking?**

EPA is making available to the public the risk assessments that have been developed as part of the Agency's public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for cycloate, available in the individual pesticide docket. Cycloate is used only on garden beets, spinach, and sugar beets and is proposed for use on Swiss chard.

EPA and the U.S. Department of Agriculture (USDA) have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as cycloate, EPA and USDA have adopted an interim public participation process. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups and other Federal Government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

The Agency's risk assessments and related documents for cycloate are included in the public version of the official record. As additional comments, reviews and risk assessment modifications become available, these will also be docketed. The cycloate risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

**List of Subjects**

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 5, 2004.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 04–10779 Filed 5–11–04; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0015; FRL–7354–3]**

## Dimethoate; Use Cancellation Order; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; correction.

**SUMMARY:** EPA issued a notice in the **Federal Register** of January 28, 2004, prohibiting formulation of manufacturing use dimethoate products into end-use products labeled for use on certain crops. This notice announces amendments to the January 28, 2004 cancellation order. These amendments correctly identify the affected crops and pesticide products, eliminate a product cancellation, and correct the existing stocks provisions.

**FOR FURTHER INFORMATION CONTACT:** Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8180; e-mail address: *dobak.pat@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

The Agency included in the January 28, 2004 cancellation order a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0015 and OPP–2003–0263. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is

open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

## II. What Does this Correction Do?

The original cancellation order for uses of pesticide products containing dimethoate on various commodities was published in the **Federal Register** on January 28, 2004 (OPP–2004–0015) (69 FR 4135) (FRL–7340–1). Units II., III., and IV. in this notice correct the January 28, 2004 cancellation order Units II., III., and V. (pages 4135 and 4136) in order to make them consistent with the registrants' voluntary cancellation requests and with the September 10, 2003 notice of receipt of requests to cancel certain uses. Two crops included in the cancellation requests and identified in the September 10, 2003 (OPP–2003–0263) (68 FR 53371) (FRL–7321–2) notice of receipt (cabbage and collards) were inadvertently left out of the January 28, 2004 cancellation order. In addition, although Table 2 of the January 28, 2004 cancellation order was consistent with the September 10, 2003 notice of receipt, it was not consistent with all of the written requests by the registrants. Table 2 of the January 28, 2004 cancellation order has been deleted and product 7969-32 moved to Table 1 as only certain uses have been cancelled. Lastly, some language in Unit V. of the January 28, 2004 cancellation order is not consistent with the proposed existing stocks provisions included in the September 10, 2003 notice of receipt. The corrected language in this notice is consistent with the cancellation requests made by the registrants and with the September 10, 2003 notice of receipt. The January 28, 2004 cancellation order is hereby amended as follows:

1. This correction announces cancellation, as-requested by the dimethoate technical registrants, of the following crop uses from all dimethoate technical products registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA): Apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza, spinach, tomatillo, and trefoil. The cancellations of the cabbage and collards uses are effective as of May 12, 2004. The cancellations of the other uses became effective January 28, 2004.

2. The manufacturing-use product registrations for which cancellation was requested are identified in Table 1 of this notice. The registrants will be allowed until January 27, 2005, to exhaust existing stocks of these products with labels that still include the cancelled uses identified in this notice. The Agency reserves the right to propose shorter existing stocks time periods for dimethoate products in future **Federal Register** notices and to include end-use products as well.

TABLE 1. MANUFACTURING-USE PRODUCTS SUBJECT TO CANCELLATION OF CERTAIN USES

| Company name | Product name | Product registration no. |
|---|---|---|
| Cheminova | Chemethoate technical | 4787–7 |
| Gowan | Gowan dimethoate technical | 10163–211 |
| Drexel | Drexel dimethoate technical | 19713–209 and 19713–525 |
| Micro Flo | Dimethoate technical | 51036–279 |
| BASF Corporation | Perfekthion manufacturers' concentrate | 7969–32 |

## III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA approves the requested cancellations of the dimethoate uses on apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza, spinach, tomatillo, and trefoil for the product registrations identified in Table 1 of this notice. In addition, also pursuant to section 6(f) of FIFRA. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of this notice in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks in Unit IV., will be considered a violation of FIFRA.

EPA is not at this time proposing to revoke existing tolerances issued pursuant to the Federal Food, Drug, and Cosmetic Act for residues of dimethoate in or on apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza, spinach, tomatillo, and trefoil. This is because registrations authorizing such uses are still in effect for certain end-use products containing dimethoate.

## IV. Provisions for Disposition of Existing Stocks

For purposes of this cancellation order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy of (June 26, 1991) (56 FR 29362), as those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions of this cancellation order are as follows:

1. *Distribution or sale.* It is unlawful for any person to distribute or sell existing stocks of any product identified in Table 1 of this notice that is labeled for use on apples, grapes, spinach, head lettuce, cabbage, collards, broccoli raab, fennel, tomatillo, lespedeza, and trefoil, except:

i. Registrants identified in Table 1 of this notice may sell and distribute existing stocks of their own products until January 27, 2005.

ii. Any person may ship such existing stocks for the purpose of export consistent with section 17 of FIFRA or for proper disposal in accordance with applicable law.

2. *Use for producing other products.* It is unlawful for any person to use existing stocks of any product identified in Table 1 of this notice to produce any product labeled for use on apples, broccoli raab, cabbage, collards, fennel, grapes, head lettuce, lespedeza spinach, tomatillo, or trefoil after January 27, 2005.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: May 29, 2004.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 04–10778 Filed 5–11–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0118; FRL–7357–7]**

## Isodecyl Alcohol Ethoxylated (2-8 moles) Polymer with Chloromethyl Oxirane; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket ID number OPP–2004–0118, must be received on or before June 11, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0118. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you

wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0118. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0118. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0118.

3. *By hand delivery or courier.* Deliver your comments to:Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0118. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 2004.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Cognis Corporation**

*PP 4E6820*

EPA has received a pesticide petition (PP 4E6820) from Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane in or on all raw agricultural commodities when used as an inert ingredient in pesticide formulations under 40 CFR 180.960 (polymers). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* Cognis is petitioning that the polymer isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane be exempt from the requirement of a tolerance since the polymer qualifies under the polymer exemption criteria of 40 CFR 723.250(e) and, therefore, can be considered a low-risk polymer.

2. *Analytical method.* Since the petitioner is requesting a tolerance exemption an analytical method for residues of the polymer in food crops is not required.

*B. Toxicological Profile*

Where it can be determined that an inert ingredient meets the definition of an exempt or low-risk polymer (40 CFR 723.250) then the production of data is generally not required by EPA to establish a tolerance or the exemption from a tolerance. Cognis Corporation asserts that the data and information provided below are sufficient to establish the activity and toxicity associated with isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane as an inert ingredient when applied to growing crops or raw agricultural commodities.

Further, in the case of chemical substances described as polymers, EPA has established criteria, which when they are met or exceeded, are considered low-risk. These criteria are described in 40 CFR 723.250, and identify polymers that are relatively unreactive, stable, and typically are not absorbed when compared to other chemical substances including some polymers.

The criteria described in 40 CFR 723.250, and addressed below, will generally exclude polymer chemicals that are not well-known and understood, and potentially present a significant risk of adverse effects. Therefore, the polymers that meet or exceed these criteria can be considered minimal or negligible risk.

Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxiraneconforms to the definition of a low-risk polymer as described in 40 CFR 723.250 as presented below.

a. Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

b. Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane contains as the integral part of its composition the atomic elements hydrogen, oxygen and carbon.

c. Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

d. Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is not designed nor reasonably anticipated to substantially depolymerize, degrade or decompose.

e. Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is manufactured from monomers that are listed in the Toxic Substances Control Act (TSCA), Chemical Substance Inventory, or manufactured under an applicable TSCA section 5 exemption.

f. Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is not a water absorbing polymer.

g. Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane does not contain any reactive functional groups.

h. The minimum number-average molecular weight of isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is approximately 2,500 daltons. Substances with molecular weights greater than 400 Daltons are generally not absorbed through the intact skin, and substances with molecular weights greater than 1,000 daltons are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are incapable of eliciting a toxic response via these routes of exposure.

i. Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane contains less than 10% oligomeric material below molecular weight of 500 daltons and less than 25% oligomeric material below 1,000 daltons.

*C. Aggregate Exposure*

1. *Dietary exposure.* Since isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is considered a low-risk polymer there is a reasonable certainty of no harm from exposure to this polymer from food or drinking water nor from an aggregate exposure.

2. *Non-dietary exposure.* Since isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is considered a low-risk polymer there is a reasonable certainty of no harm from exposure to this polymer from non-dietary means.

*D. Cumulative Effects*

At this time, there is no information to indicate that any toxic effects produced by isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane would be cumulative with those of any other chemical. Given the compound's categorization as a low-risk polymer, and its proposed use in pesticide formulations, there is no expectation of increased risk due to cumulative exposure.

*E. Safety Determination*

1. *U.S. population.* Since isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is considered a low-risk polymer no adverse effects are expected.

2. *Infants and children.* Since isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane is considered a low-risk polymer, no adverse effects are expected.

*F. International Tolerances*

There are no CODEX maximum residue levels established for residues of isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane in or on crops or commodities at this time.

[FR Doc. 04–10781 Filed 5–11–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–7660–2]

### Proposed Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)—Creede Airport Properties Site, Mineral County, Colorado

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice and request for public comment.

**SUMMARY:** Notice is hereby given of a proposed settlement under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), concerning property in the vicinity of the Mineral County Memorial Airport, Creede, Colorado (Property). The proposed settlement is a prospective purchaser agreement with John Parker, Navajo Development LLC, Navajo Development Company, Inc. and the Mineral County Fairgrounds Associations (MCFA) (hereinafter, the "Settling Respondents"), which would resolve the CERCLA liability of the Settling Respondents with respect to the Property. Pursuant to the settlement, Settling Respondents will provide EPA and the State access, perform cleanup activities on the Property pursuant to plans approved by the Colorado Voluntary Cleanup Program and grant an environmental covenant that will place land use controls on the Property.

**DATES:** The public may submit comments to EPA on or before June 11, 2004.

**ADDRESSES:** The proposed settlement is available for inspection at the EPA Region 8 Superfund Record Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado, (303) 312–6473. Comments should be addressed to Suzanne Bohan, Enforcement Attorney, (8ENF-L), U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, and should reference the Creede Airport Properties Prospective Purchaser Agreement.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Bohan, Enforcement Attorney, at (303) 312–6925.

**SUPPLEMENTARY INFORMATION:** The Creede Airport Properties Site (Site) includes nearly 300 acres and is located just south of the City of Creede on the relatively flat flood plain of Willow Creek. The Rio Grande flows from west to east approximately one half mile south of the Property. The Site has been impacted by historical mining activities upstream of Creede.

Within the Site, there are five parcels of land; all are adjacent to or part of the Mineral County Airport in Creede. Navajo Development, LLC, and Navajo Development, Inc. has an option to purchase Parcel 1 (consisting of subparcels 1A, 1B 1C and 1D)(hereinafter, "the Property"). The Property is owned by Creede Mines, Inc. Navajo intends to purchase the Property and donate 3 subparcels (subparcels 1B, 1C and 1D) to the Mineral County Fairgrounds Association ("MCFA"), a 501(c)(3) non-profit charitable organization, simultaneous with Navajo's acquisition of Parcel 1.

After completing the cleanups on the Property, the Settling Respondents plan to redevelop this idle property for a mixture of uses which may include low income housing, commercial development and a bike trail.

*It is so agreed.*

Dated: April 29, 2004.

**Carol Rushin,**

*Assistant Regional Administrator, Region 8.*

[FR Doc. 04–10777 Filed 5–11–04; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 4, 2004.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 12, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–XXXX.

*Title:* Qualification Questions.

*Form No.:* FCC Form 312–EZ.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 3,872.

*Estimated Time Per Response:* 10 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 38,720 hours.

*Total Annual Cost:* $4,347,000.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The FCC Form 312–EZ is used by applicants for routine conventional C-band and Ku-band earth station applications eligible for the "auto-grant" procedure. This information collection is used by the Commission in carrying out its duties concerning satellite communications as required by sections 301, 308, 309 and 310 of the Communications Act, as amended. This collection is also used by Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement. The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide

telecommunications services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

This form has already been approved under OMB control number 3060–0678. However, after the 60-day comment period ends for this collection, the Commission will be submitting it to the OMB as a new collection to separate the rule requirements from the form itself. This will enable the Commission to maintain and track the collection in an easier manner.

*OMB Control No.:* 3060–XXXX.

*Title:* Renewal of Application for Satellite Space and Earth Station Authorization.

*Form No.:* FCC Form 312–R.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 6.

*Estimated Time Per Response:* 11 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 66 hours.

*Total Annual Cost:* $2,288,000.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The FCC Form 312–R is used by earth station licensees to request renewals of their applications. This information collection is used by the Commission in carrying out its duties concerning satellite communications as required by sections 301, 308, 309 and 310 of the Communications Act, as amended. This collection is also used by Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement. The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

This form has already been approved under OMB control number 3060–0678. However, after the 60-day comment period ends for this collection, the Commission will be submitting it to the OMB as a new collection to separate the rule requirements from the form itself. This will enable the Commission to maintain and track the collection in an easier manner.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10708 Filed 5–11–04; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

April 29, 2004.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 11, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0182.

*Title:* Section 73.1620, Program Tests.

*Form Number:* N/A.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 1,513.

*Estimated Hours per Response:* 1–5 hours.

*Frequency of Response:* On occasion reporting requirement; third party disclosure.

*Total Annual Burden:* 1,553 hours.

*Total Annual Costs:* None.

*Privacy Impact Assessment:* No impacts.

*Needs and Uses:* 47 CFR 73.1620(a)(1) requires permittees of a nondirectional AM or FM station, or a nondirectional or directional TV station to notify the FCC upon beginning of program tests. An application for license must be filed within 10 days of this notification. 47 CFR 73.1620(a)(2) requires a permittee of an AM or FM station with a directional antenna to file a request for program test authority 10 days prior to date on which it desires to begin program tests. This is filed in conjunction with an application for license. 47 CFR 73.1620(a)(3) requires a licensee of an FM station replacing a directional antenna without changes to file a modification of the license application within 10 days after commencing operations with the replacement antenna. 47 CFR 73.1620(a)(4) requires a permittee of an AM station with a directional antenna to file a request for program test authority 10 days prior to the date on which it desires to begin program test. 47 CFR 73.1620(a)(5) requires that, except for permits subject to successive license terms, a permittee of an LPFM station may begin program tests upon notification to the FCC in Washington, DC provided that within 10 days thereafter an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such licenses's authorization. 47 CFR 73.1620(b) allows the FCC the right to revoke, suspend, or modify program tests by any station

without right of hearing for failure to comply adequately with all terms of the construction permit or the provision of 47 CFR 73.1690(c) for a modification of license application, or in order to resolve instances of interference. The FCC may also require the filing of a construction permit application to bring the station into compliance with the Commission's rules and policies. 47 CFR 73.1620(f) requires licensees of UHF TV stations, assigned to the same allocated channel which a 1000 watt UHF translator station is authorized to use, to notify the licensee of the translator station at least 10 days prior to commencing or resuming operation and certify to the FCC that such advance notice has been given. 47 CFR 73.1620(g) requires permittees to report any deviations from their promises, if any, in their application for license to cover their construction permit (FCC Form 302) and on the first anniversary of their commencement of program tests. The notification in § 73.1620(a) alerts the Commission that construction of a station has been completed and that the station is broadcasting program material. The notification in § 73.1620(f) alerts the UHF translator station that the potential of interference exists. The report in § 73.1620(g) stating deviations are necessary to eliminate possible abuses of the FCC's processes and to ensure that comparative promises relating to service to the public are not inflated.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10709 Filed 5–11–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 30, 2004.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction (PRA) comments should be submitted on or before July 12, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0678.

*Title:* Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations.

*Form No.:* FCC Form 312, Schedule S.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 2,396.

*Estimated Time per Response:* 11 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 26,334 hours.

*Total Annual Cost:* $7,467,000.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by sections 301, 308, 309 and 310 of the Communications Act, 47 U.S.C. 301, 308, 309 and 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement. The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to WTO Basic Telecom Agreement.

*OMB Control Number:* 3060–1007.

*Title:* Streamlining and Other Revisions of Part 25 of the Commission's Rules.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 188.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* On occasion, annually and other reporting requirements, and third party disclosure requirement.

*Total Annual Burden:* 9,762 hours.

*Total Annual Cost:* $110,394,000.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by sections 301, 308, 309 and 310 of the Communications Act, 47 U.S.C. 301, 308, 309 and 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement. The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to WTO Basic Telecom Agreement.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10710 Filed 5–11–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

* * * * *

Previously Announced Date and Time: Tuesday, May 11, 2004, 10 a.m. meeting closed to the public. This meeting was cancelled.

* * * * *

**DATE AND TIME:** Tuesday, May 18, 2004 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**DATE AND TIME:** Thursday, May 20, 2004 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (ninth floor)

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Advisory Opinion 2004–11: Streitz for U.S. Senate 2004.

Routine Administrative Matters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Biersack, Acting Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 04–10904 Filed 5–10–04; 2:56 pm]

BILLING CODE 6715–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 26, 2004.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Darin J. Johnson*, Sutherland, Iowa; to acquire additional voting shares of Old O'Brien Banc Shares, Inc., Sutherland, Iowa, and thereby indirectly acquire additional voting shares of First State Bank, Hawarden, Iowa, The Hawarden Banking Company, Hawarden, Iowa, and Security State Bank, Sutherland, Iowa.

Board of Governors of the Federal Reserve System, May 6, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–10720 Filed 5–11–04; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 2004.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Parkway Bancorp, Inc.*, Harwood Heights, Illinois; to acquire 100 percent of the voting shares of United Arizona Bank, National Association, Cave Creek, Arizona.

**B. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. Porter Bancorp, Inc.*, Shepherdsville, Kentucky; to acquire 100 percent of the voting shares of United Community Bank, Glasgow, Kentucky.

*2. Southern Missouri Bancorp, Inc.*, Poplar Bluff, Missouri; to become a bank holding company by retaining 100 percent of the voting shares of Southern Missouri Bank and Trust Company, Poplar Bluff, Missouri, upon its conversion from a state savings bank to a state chartered trust company.

Board of Governors of the Federal Reserve System, May 6, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–10719 Filed 5–11–04; 8:45 am]

BILLING CODE 6210–01–S

## GENERAL SERVICES ADMINISTRATION

### Performance Review Boards for Small Client Agencies Services by the General Services Administration, Names of Members

**AGENCY:** Office of the Deputy Regional Administration, Agency Liaison Division, General Services Administration.

**ACTION:** Notice.

**SUMMARY:** Sec. 4314(c) (1) through (5) of Title 5 U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The board

shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive. The Performance Review Board also shall make recommendations as to whether the career executive should be recertified, conditionally recertified, or not recertified.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melynda Clarke, General Services Administration, Office of the Regional Administrator, Agency Liaison Division, Washington, DC 20407; or by phone at (202) 708–5702.

**SUPPLEMENTARY INFORMATION:** As provided under section 601 of the Economy Act of 1932, amended 31 U.S.C. 1525, the General Services Administration through its Agency Liaison Division, provides various personnel management services to a number of diverse Presidential commissions, committees, boards and other agencies through reimbursable administrative support agreements. This notice is processed on behalf of the client agencies, and it supersedes all other notices in the **Federal Register** on this subject. Because of their small size, a Performance Review Board register has been established in which SES members from the client agencies participate. The Board is composed of SES members from various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve a particular client agency.

The members whose names appear on the Performance Review Board standing roster to serve client agencies are:

*Barry M. Goldwater Scholarship and Excellence In Education Foundation*—Gerald J. Smith, Executive Secretary;

*Committee for Purchase From People Who Are Blind or Severely Disabled*—Leon A. Wilson, Jr., Executive Director;

*Federal Retirement Thrift Investment Board*—David L. Black, Director of Accounting; Lawrence E. Stiffler, Director of automated Systems; Thomas J. Trabucco, Director of Benefits and Investment; Elizabeth S. Woodruff, General Counsel; and Pamela J. Morán, Deputy Director of External Affairs;

*Harry S. Truman Scholarship Foundation*—Louis H. Blair, Executive Secretary;

*Japan-United States Friendship Commission*—Eric J. Gangloff, Executive Director;

*National Mediation Board*—Benetta M. Mansfield, Chief of Staff; and Mary L. Johnson, General Counsel.

Dated: April 15, 2004.

**Melynda Clarke,**

*Director, Agency Liaison Division.*

[FR Doc. 04–10764 Filed 5–11–04; 8:45 am]

BILLING CODE 6820–34–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## DEPARTMENT OF AGRICULTURE

### Announcement of Final Meeting of 2005 Dietary Guidelines Advisory Committee and Solicitation of Written Comments; Correction

**AGENCIES:** U.S. Department of Health and Human Services (HHS), Office of Public Health and Science; and U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services and Research, Education and Economics.

**ACTION:** Notice; correction.

**SUMMARY:** The U.S. Department of Health and Human Services and the U.S. Department of Agriculture published a document in the **Federal Register** of April 26, 2004 concerning the May 26 and 27, 2004 meeting of the Dietary Guidelines Advisory Committee. The original meeting location noted in the document has changed.

*Correction:*

In the **Federal Register** of April 26, 2004, in FR Doc. Vol. 69, No. 80, on page 22519 in the third column, correct the **ADDRESSES** caption to read:

**ADDRESSES:** The meeting will be held at the Holiday Inn Bethesda, located at 8120 Wisconsin Ave., Bethesda, Maryland in the Versailles Ballroom. The Holiday Inn Bethesda is three blocks south of the National Institutes of Health and the Bethesda Naval Hospital. The hotel is located between the Bethesda Metro and the Medical Center stops. Complimentary shuttle service is available to National Institutes of Health Campus Bldg. 10, Bethesda Naval Medical Center, and nearby Medical Center Metro Station; and area airports. Paid parking is available.

**FOR FURTHER INFORMATION CONTACT:** Karyl Thomas Rattay (phone 202–690–7102), HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201. Additional information is available on the Internet at *http://www.health.gov/dietaryguidelines.*

Dated: May 6, 2004.

**Kathryn Y. McMurry,**

*Designated Federal Officer, Dietary Guidelines Advisory Committee, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.*

[FR Doc. 04–10803 Filed 5–11–04; 8:45 am]

BILLING CODE 4150–32–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection

**AGENCY:** Office of the Secretary, Office of Public Health and Science, HHS.

**ACTION:** Notice.

**SUMMARY:** The Office of Public Health and Science (OPHS), Department of Health and Human Services (HHS) announces a final guidance document for Institutional Review Boards (IRBs), investigators, research institutions, and other interested parties, entitled "Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection." This guidance document raises points to consider in determining whether specific financial interests in research could affect the rights and welfare of human subjects, and if so, what actions could be considered to protect those subjects. This guidance applies to human subjects research conducted or supported by HHS or regulated by the Food and Drug Administration.

**DATES:** The guidance is effective as of the date of publication.

**ADDRESSES:** Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, (301) 402–4994, facsimile (301) 402–2071.

**FOR FURTHER INFORMATION CONTACT:** Submit requests for single copies of the guidance document to the address identified below for further information. Requests may be made by mail or e-mail. Persons with access to the Internet also may obtain the document at *http://ohrp.osophs.dhhs.gov/humansubjects/finreltn/finreltn.htm.* Glen Drew, Office for Human Research Protections, Office of Public Health and Science, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, (301) 402–4994, facsimile (301) 402–2071; e-mail *gdrew@osophs.dhhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the March 31, 2003, **Federal Register**, (68 FR 15456) OPHS published a notice seeking comments on the HHS draft guidance for IRBs, investigators, and research institutions, entitled "Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection." The Department has considered the 40 comments that were submitted and has made appropriate changes in the guidance.

The guidance recommends consideration of approaches and methods for dealing with issues of financial interests that could affect HHS human research subject protections in research subject to 45 CFR part 46 for HHS conducted or support research and 21 CFR parts 50 and 56 for FDA regulated clinical investigations. The guidance expressly does not address regulatory requirements designed to enhance data integrity and objectivity in research found in 42 CFR part 50, subpart F, 45 CFR part 94, and 21 CFR part 54.

The guidance recommends that, in particular, IRBs, institutions engaged in research, and investigators consider whether specific financial relationships create financial interests in research studies that may adversely affect the rights and welfare of subjects. The guidance poses general considerations in evaluating financial relationships and their possible effects on human subjects. More detailed points for consideration are also offered for institutions, IRBs, and investigators.

**Department of Health and Human Services**

*Final Guidance Document*

Financial Relationships and Interests in Research Involving Human Subjects: Guidance for Human Subject Protection

This document replaces the "HHS Draft Interim Guidance: Financial Relationships in Clinical Research: Issues for Institutions, Clinical Investigators, and IRBs to Consider when Dealing with Issues of Financial Interests and Human Subject Protection" dated January 10, 2001. This document is intended to provide guidance. It does not create or confer rights for or on any person and does not operate to bind the Department of Health and Human Services (HHS, or the Department), including the Food and Drug Administration (FDA), or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## I. Introduction

### *A. Purpose*

In this guidance document, HHS raises points to consider in determining whether specific financial interests in research affect the rights and welfare of human subjects [1] and if so, what actions could be considered to protect those subjects. This guidance applies to human subjects research conducted or supported by HHS or regulated by the FDA. The consideration of financial relationships, as discussed in this document relates to human subject protection in research conducted under the HHS or FDA regulations (45 CFR part 46, 21 CFR parts 50, 56).[2] This document is nonbinding and does not change any existing regulations or requirements, and does not impose any new requirements.

Institutions and individuals involved in human subjects research may establish financial relationships related to or separate from particular research projects. Those financial relationships may create financial interests of monetary value, such as payments for services, equity interests, or intellectual property rights. A financial interest related to a research study may be a conflicting financial interest. The Department recognizes that some conflicting financial interests in research may affect the rights and welfare of human subjects. This document provides some possible approaches to consider in assuring that human subjects are adequately protected. Institutional review boards (IRBs), institutions, and investigators engaged in human subjects research each have appropriate roles in ensuring that financial interests do not compromise the protection of research subjects.[3]

### *B. Target Audiences*

The principal target audiences include investigators, IRB members and staffs, institutions engaged in human subjects research and their officials, and other interested members of the research community.

### *C. Underlying Principles*

The regulations protecting human research subjects are based on the ethical principles described in the Belmont report: [4] respect for persons, beneficence, and justice. The Belmont principles should not be compromised by financial relationships. Openness and honesty are indicators of respect for persons, characteristics that promote

[1] Under the Public Health Service Act and other applicable law, HHS has authority to regulate institutions engaged in HHS conducted or supported research involving human subjects. For a description of what is meant by institutions engaged in research see the Office for Human Research Protections (OHRP) engagement policy at *http://ohrp.osophs.dhhs.gov/humansubjects/assurance/engage.htm*. Under the Federal Food, Drug, and Cosmetic Act, FDA has the authority to regulate Institutional Review Boards (IRBs) and investigators involved in the review or conduct of FDA-regulated research.

[2] This document does not address HHS Public Health Service regulatory requirements that cover institutional management of the financial interests of individual investigators who conduct Public Health Service (PHS) supported research (42 CFR part 50, subpart F, and 45 CFR part 94). This document also does not address FDA regulatory requirements that place responsibilities on sponsors to disclose certain financial interests of investigators to FDA in marketing applications (21 CFR part 54). Guidelines interpreting the application of the PHS regulations to research conducted or supported by the National Institutes of Health (NIH) that involve human subjects are available at *http://grants.nihgov/grants/guide/notice-files/NOT-OD-00-040.html*. Guidance interpreting the provisions of the FDA regulations appears at *http://www.fda.gov/oc/guidance/financialdis.html*.

The PHS regulations require grantee institutions and contractors to designate one or more persons to review investigators' financial disclosure statement describing their significant financial interests and ensure that conflicting financial interests are managed, reduced, or eliminated before expenditure of funds (42 CFR 50.604(b), 45 CFR 94.4(b)). The PHS threshold for significant financial interest is $10,000 per year income or equity interests over $10,000 and 5 percent ownership in a company (42 CFR 50.603, 45 CFR 94.3). The regulations give several examples of methods for managing investigators' financial conflicts of interest (42 CFR 50.605(a), 54 CFR 94.5(a)).

Sponsors are required to disclose certain financial interests of clinical investigators to FDA in marketing approval applications under the Federal Food, Drug and Cosmetic Act (FD&C Act) (21 CFR part 54). FDA regulations at 21 CFR part 54 address requirements for the disclosure of certain financial interests held by clinical investigators. The purpose of these regulations is to provide additional information to allow FDA to assess the reliability of the clinical data (21 CFR 54.1). The FDA regulations require sponsors seeking marketing approval for products to certify that investigators do not have certain financial interests, or to disclose those interests to FDA (21 CFR 54.4). These regulations require sponsors to report (1) financial arrangements between the sponsor and the investigator whereby the value of the investigator's compensation could be influenced by the outcome of the trial; (2) any proprietary interest in the product studied held by the investigator; (3) significant payments of other sorts over $25,000 beyond costs of the study; or (4) any significant equity interest in the sponsor of a covered study (21 CFR 54.4).

Note that when the PHS regulations were promulgated, the National Science Foundation (NSF) Investigator Financial Disclosure Policy was revised to match closely the PHS regulations. The NSF conflict of interest policy appears at *http://www.nsf.gov/bfa/cpo/gpm95/ch5.htm#ch5*.

[3] The Department recognizes that some non-financial conflicting interests related to research also may affect the rights and welfare of human subjects. However, non-financial interests are beyond the scope of this guidance document.

[4] *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/belmont.htm*.

ethical research and can only strengthen the research process.

*D. Basis for This Document*

The HHS human subject protection regulations (45 CFR part 46) require that institutions performing HHS conducted or supported non-exempt research involving human subjects have the research reviewed and approved by an IRB whose goal is to help ensure that the rights and welfare of human subjects are protected. The comparable FDA regulations (21 CFR parts 50 and 56) require that FDA regulated research involving human subjects is reviewed and approved by such an IRB. Under these regulations, IRBs are responsible for, among other things, determining that:

Risks to subjects are minimized (45 CFR 46.111(a)(1), 21 CFR 56.111(a)(1));

Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects (45 CFR 46.111(a)(2), 21 CFR 56.111(a)(2));

Selection of subjects is equitable (45 CFR 46.111(a)(3), 21 CFR 56.111(a)(3));

Informed consent will be sought from each prospective subject (45 CFR 46.111(a)(4), 21 CFR 56.111(a)(4)); and,

The possibility of coercion or undue influence is minimized (45 CFR 46.116, 21 CFR 50.20).

In addition the IRB may

Require that additional information be given to subjects "when in the IRB's judgment the information would meaningfully add to protection of the rights and welfare of subjects" (45 CFR 46.109(b), 21 CFR 56.109(b)).

For HHS conducted or supported research, the funding agency may impose additional conditions as necessary for the protection of human subjects (45 CFR 46.124).

IRBs are also responsible for ensuring that members who review research have no conflicting interest. 45 CFR 46.107(e) directly addresses conflicts of interest by requiring that "no IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB." FDA regulations include identical language at 21 CFR 56.107(e).

Concerns have grown that financial conflicts of interest in research, derived from financial relationships and the financial interests they create, may affect the rights and welfare of human subjects in research. Financial interests are not prohibited, and not all financial interests cause conflicts of interest or affect the rights and welfare of human subjects. HHS recognizes the complexity of the relationships between government, academia, industry and others, and recognizes that these relationships often legitimately include financial relationships. However, to the extent financial interests may affect the rights and welfare of human subjects in research, IRBs, institutions, and investigators need to consider what actions regarding financial interests may be necessary to protect those subjects.

In May 2000, HHS announced five initiatives to strengthen human subject protection in clinical research. One of these was to develop guidance on financial conflict of interest that would serve to further protect research participants. As part of this initiative, HHS held a conference on the topic of human subject protection and financial conflict of interest on August 15–16, 2000. A draft interim guidance document, "Financial Relationships in Clinical Research: Issues for Institutions, Clinical Investigators, and IRBs to Consider when Dealing with Issues of Financial Interests and Human Subject Protection," based on information obtained at and subsequent to that conference was made available to the public for comment on January 10, 2001.[5] This document replaces that draft interim guidance. The Department notes that other organizations have also addressed financial interests in human research via reports, guidance and recommendations.[6] Many of these contain strong and sound ideas for actions to deal with potential financial conflicts of interest on the part of institutions, investigators and IRBs.

## II. Guidance for Institutions, IRBs and Investigators

*A. General Approaches To Address Financial Relationships and Interests in Research Involving Human Subjects*

The Department recommends that in particular, IRBs, institutions, and investigators consider whether specific financial relationships create financial interests in research studies that may adversely affect the rights and welfare of subjects. These entities may find it useful to include the following questions in their deliberations:

What financial relationships and resulting financial interests could cause potential or actual conflicts of interest?

At what levels should those potential or actual financial conflicts of interest be managed or eliminated?

What procedures would be helpful, including those to

[5] *http://ohrp.osophs.dhhs.gov/humansubjects/finreltn/finguid.htm.*

[6] Recent Federal and Private Sector Activities: In addition to the HHS initiative, several Federal organizations have examined the issues related to financial relationships in human subjects research:

- The National Bioethics Advisory Commission (NBAC), in a comprehensive examination of the "Ethical and Policy Issues in Research Involving Human Participants," in Chapter 3 recommended development of federal, institutional, and sponsor policies and guidance to ensure that research subjects' rights and welfare are protected from the effects of conflicts of interest (*http://www.georgetown.edu/research/nrcbl/nbac/human/overvol1.pdf*).
- The HHS Office of the Inspector General (OIG) has issued a series of reports examining regulation and activities of IRBs. A June 2000 OIG report addressed recruitment practices and found that about one-quarter of the surveyed IRBs consider financial arrangements with sponsors of research as part of their protocol review (*http://oig.hhs.gov/oei/reports/oei-01-97-00195.pdf*).
- The National Human Research Protections Advisory Committee (NHRPAC) offered advice to HHS regarding the content and finalization of the HHS Draft Interim Guidance in August, 2001 (*http://ohrp.osophs.dhhs.gov/nhrpac/documents/aug01a.pdf*).
- In December 2001, the General Accounting Office released report 02–89 "Biomedical Research: HHS Direction Needed to Address Financial Conflicts of Interest." The report recommended that the Secretary of Health and Human Services develop specific guidance or regulations concerning institutional financial conflicts of interest (*http://www.gao.gov/*).
- A number of nongovernmental organizations recently have addressed financial interests in reports and issued new or updated policies or guidelines of varying scope and specificity, including the Association of American Universities, October 2001 (*http://www.aau.edu/research/COI.01.pdf*), the Association of American Medical Colleges, December 2001 and October 2002 (*http://www.aamc.org/members/coitf/firstreport.pdf* and *http://www.aamc.org/members/coitf/2002coireport.pdf*), the International Committee of Medical Journal Editors October 2001 (*http://www.icmje.org/sponsor.htm*), the American Medical Association, January 2002 (*http://jama.ama-assn.org/cgi/content/short/287/1/78*), and opinions E–8.0315 Managing Conflicts of Interest in the Conduct of Clinical Trials (*http://www.ama-assn.org/ama/pub/category/8471.html*) and E–8031 Conflicts of Interest: Biomedical Research (*http://www.ama-assn.org/ama/pub/category/8470.html*), the American Society of Gene Therapy, April 2000 (*http://www.asgt.org/policy/index.html*), the American Society of Clinical Oncology, June 2003 (*http://www.jco.org/cgi/content/full/21/12/2394*), and the Institute of Medicine, October 2002, report "Responsible Research: A Systems Approach to Protecting Research Participants" (*http://www.nap.edu/books/0309084881/html/*).
- Two accrediting bodies for human subject protection programs have included elements addressing individual and institutional conflicts of interest in their accreditation evaluations, the Association for the Accreditation of Human Research Protection Programs (*http://www.aahrpp.org/images/Evaluation_Instrument_1.pdf*) and the National Committee for Quality Assurance, (*http://www.ncqa.org/Programs/QSG/VAHRPAP/vahrpapfindstds.pdf*).Internationally, the World Medical Association's revision in 2000 of the Declaration of Helsinki, (*http://www.wma.net/e/policy/17-c_e.html*) principle 22, includes "sources of funding" among the items of information to be provided to subjects. A number of individual institutions also have developed policies for their own situations, as noted in the NIH Guide Notice issued in June 2000 (*http://grants.nih.grants/guide/notice-files/NOT-OD-00-040.html*). Some of these policies involve conflicts of interest management methods and address institutional financial interests as well as individual interests.

• Collect and evaluate information regarding financial relationships related to research,

• Determine whether those relationships potentially cause a conflict of interest, and

• Determine what actions are necessary to protect human subjects and ensure that those actions are taken?

Who should be educated regarding financial conflict of interest issues and policies?

What entity or entities would examine individual and/or institutional financial relationships and interests?

B. Points for Consideration

Financial interests determined to create a conflict of interest may be managed by eliminating them or mitigating their impact. A variety of methods or combinations of methods may be effective. Some methods may be implemented by institutions engaged in the conduct of research, and some methods may be implemented by IRBs or investigators. Some of those may apply before research begins, and some may apply during the conduct of the research.

In establishing and implementing methods to protect the rights and welfare of human subjects from conflicts of interest created by financial relationships of parties involved in research, the Department recommends that IRBs, institutions engaged in research, and investigators consider the questions below. Additional questions may be appropriate. The Department's intent is not to be exhaustive, but to suggest ways to examine the issues so that appropriate actions can be taken to protect the rights and welfare of human research subjects. The Department recognizes that a number of institutions currently address such issues in their consideration of financial interests of parties involved in human subject research.

Does the research involve financial relationships that could create potential or actual conflicts of interest?

• How is the research supported or financed?

• Where and by whom was the study designed?

• Where and by whom will the resulting data be analyzed?

What interests are created by the financial relationships involved in the situation?

• Do individuals or institutions receive any compensation that may be affected by the study outcome?

• Do individuals or institutions involved in the research:

—Have any proprietary interests in the product, including patents, trademarks, copyrights, or licensing agreements?

—Have an equity interest in the research sponsor and, if so, is the sponsor a publicly held company or non-publicly held company?

—Receive significant payments of other sorts? (*e.g.*, grants, compensation in the form of equipment, retainers for ongoing consultation, or honoraria)

—Receive payment per participant or incentive payments, and are those payments reasonable?

Given the financial relationships involved, is the institution an appropriate site for the research?

How should financial relationships that potentially create a conflict of interest be managed?

Would the rights and welfare of human subjects be better protected by any or a combination of the following:

• Reduction of the financial interest?

• Disclosure of the financial interest to prospective subjects?

• Separation of responsibilities for financial decisions and research decisions?

• Additional oversight or monitoring of the research?

• An independent data and safety monitoring committee or similar monitoring body?

• Modification of role(s) of particular research staff or changes in location for certain research activities, *e.g.*, a change of the person who seeks consent, or a change of investigator?

• Elimination of the financial interest?

C. Specific Points for Consideration

1. Institutions

The Department recommends that institutions engaged in HHS conducted or supported human subjects research consider whether the following actions or other actions would help ensure that financial interests do not compromise the rights and welfare of human research subjects.

*Actions to consider:*

Establishing the independence of institutional responsibility for research activities from the management of the institution's financial interests.

Establishing conflict of interest committees (COICs)[7] or identifying other bodies or persons and procedures to

• Deal with individuals' or institutional financial interests in research or verify the absence of such interests and

• Address institutional financial interests in research.

[7] The acronym COIC will be used to represent the body or person(s) designated to review financial interests.

Establishing criteria to determine what constitutes an institutional conflict of interest, including identifying leadership positions for which the individual's financial interests are such that they may need to be treated as institutional financial interests.

Establishing clear channels of communication between COICs and IRBs.

Establishing policies on providing information, recommendations, or findings from COIC deliberations to IRBs.

Establishing measures to foster the independence of IRBs and COICs.

Determining whether particular individuals should report financial interests to the COIC. These individuals could include IRB members and staff and appropriate officials of the institution, along with investigators, among those who report financial interests to COICs.

Establishing procedures for disclosure of institutional financial relationships to COICs.

Providing training to appropriate individuals regarding financial interest requirements.

Using independent organizations to hold or administer the institution's financial interest.

Including individuals from outside the institution in the review and oversight of financial interests in research.

Establishing policies regarding the types of financial relationships that may be held by parties involved in the research and circumstances under which those financial relationships and interests may or may not be held.

2. IRB Operations

The Department recommends that institutions engaged in human subjects research and IRBs that review HHS conducted or supported human subjects research or FDA regulated human subjects research consider whether establishing policies and procedures addressing IRB member potential and actual conflicts of interest as part of overall IRB policies and procedures would help ensure that financial interests do not compromise the rights and welfare of human research subjects. As noted, 45 CFR 46.107(e) and 21 CFR 56.107(e) prohibit an IRB member with a conflicting interest in a project from participating in the IRB's initial or continuing review, except to provide information as requested by the IRB.

Policies and procedures to consider:

Reminding members of conflict of interest policies at each meeting and documenting any actions taken

regarding IRB member conflicts of interest related to particular protocols.

Developing educational materials for IRB members to ensure their awareness of federal regulations and institutional policies regarding financial relationships and interests in human subjects research.

3. IRB Review

The Department recommends that IRBs reviewing HHS conducted or supported human subjects research or FDA regulated human subjects research consider whether the following actions, or other actions related to conduct or oversight of research, would help ensure that financial interests do not compromise the rights and welfare of human research subjects.

Actions to consider:

Determining whether methods used for management of financial interests of parties involved in the research adequately protect the rights and welfare of human subjects.

Determining whether other actions are necessary to minimize risks to subjects.

Determining the kind, amount, and level of detail of information to be provided to research subjects regarding the source of funding, funding arrangements, financial interests of parties involved in the research, and any financial interest management techniques applied.

4. Investigators

The Department recommends that investigators conducting human subjects research consider the potential effects that a financial relationship of any kind might have on the research or on interactions with research subjects, and what actions to take.

Actions to consider:

Including information in the informed consent document, such as

- The source of funding and funding arrangements for the conduct and review of research, or
- Information about a financial arrangement of an institution or an investigator and how it is being managed.

Using special measures to modify the informed consent process when a potential or actual financial conflict exists, such as

- Having a another individual who does not have a potential or actual conflict of interest involved in the consent process, especially when a potential or actual conflict of interest could influence the tone, presentation, or type of information presented during the consent process.
- Using independent monitoring of the research.

Dated: May 5, 2004.

**Tommy G. Thompson,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 04–10849 Filed 5–11–04; 8:45 am]

**BILLING CODE 4150–36–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on June 2, 2004, from 10 a.m. to 6 p.m. and June 3, 2004, from 8 a.m. to 5 p.m.

*Location*: Gaithersburg Marriott, Salons A, B, C, and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

*Contact Person*: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On June 2, 2004, the committee will discuss, make recommendations, and vote on a premarket approval application for an artificial lumbar disc intended for spinal arthroplasty in skeletally mature patients with degenerative disc disease at one level from L4–S1. On June 3, 2004, from 8 a.m. to 1 p.m., the committee will discuss, make recommendations, and vote on a reclassification petition for total and unicompartmental mobile bearing knee joint prostheses. Also on June 3, 2004, from 1 p.m. to 5 p.m., the committee will discuss and make recommendations on a draft guidance document for clinical performance data requirements for hip joint prostheses. The draft guidance document is available at *http://www.fda.gov/ohrms/dockets/dailys/04/apr04/040504/03n-0561-c00001-vol2.pdf*. Background information for the topics, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material for the June 2 session will be posted June 1, 2004. Material for the June 3 session will be posted June 2, 2004.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 18, 2004. On June 2, 2004, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. On June 3, 2004, oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m. and 1:15 p.m. and 1:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 18, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 3, 2004.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 04–10752 Filed 5–11–04; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2002D–0113]

### Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Root-Form Endosseous Dental Implants and Endosseous Dental Implant Abutments; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Root-Form Endosseous Dental Implants and Endosseous Dental Implant Abutments." This guidance document describes a means by which root-form endosseous dental implants and endosseous dental implant abutments may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify these devices from class III to class II (special controls).

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Endosseous Dental Implant Abutments" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Angela Blackwell, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

In the **Federal Register** of May 14, 2002 (67 FR 34458), FDA announced the availability of a draft of this guidance document and invited interested persons to comment on it by August 12, 2002. FDA received a total of five comments on the proposed guidance and reclassification rule. Four comments sought clarification in the guidance document about the following issues: (1) Table of risks to health and mitigation measures and (2) fatigue testing. FDA revised the table extensively to communicate the risks more clearly and to improve the correlation between risks and mitigations without deleting any risks or mitigations. Although FDA disagreed with the comments about fatigue testing, as stated in the guidance document, the agency will consider other ways that show equivalent assurances of safety and effectiveness. In response to comments, FDA also modified other areas of the guidance document for clarity.

The guidance document provides a means by which root-form endosseous dental implants and endosseous dental implant abutments may comply with the requirement of special controls for class II devices. Following the effective date of the final reclassification rule, any firm submitting a 510(k) for the devices will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Also in the **Federal Register** of May 14, 2002 (67 FR 34416), FDA proposed to reclassify root-form endosseous dental implants and endosseous dental implant abutments into class II with this guidance document as the special control. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify root-form endosseous dental implants and endosseous dental implant abutments from class III (premarket approval) to class II (special controls).

#### II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on root-form endosseous dental implants and endosseous dental implant abutments. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if the approach satisfies the requirements of the applicable statute and regulations.

#### III. Electronic Access

To receive "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Endosseous Dental Implant Abutments" by fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1389) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance also may do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

#### IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

## V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document at any time. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 3, 2004.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 04–10749 Filed 5–11–04; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004D–0198]**

### Draft "Guidance for Industry: Acceptable Full-Length Donor History Questionnaire and Accompanying Materials for Use in Screening Human Donors of Blood and Blood Components;" Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Acceptable Full-Length Donor History Questionnaire and Accompanying Materials for Use in Screening Human Donors of Blood and Blood Components" dated April 2004. The draft guidance document, when finalized, will recognize as acceptable for use by both licensed and unlicensed manufacturers that collect human blood and blood components, the full-length donor history questionnaire and accompanying materials (Version No. 1, dated April 2004) prepared by the Interorganizational Uniform Donor History Questionnaire Task Force. The full-length donor history questionnaire and accompanying materials (DHQ documents) provide a specific process for administering questions to donors of blood and blood components intended for transfusion and further manufacture to determine their eligibility to donate consistent with FDA requirements and recommendations.

**DATES:** Submit written or electronic comments on the draft guidance by August 10, 2004, to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the Center for Biologics and Research Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Okrasinski, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Acceptable Full-Length Donor History Questionnaire and Accompanying Materials for Use in Screening Human Donors of Blood and Blood Components" dated April 2004. The draft guidance document, when finalized, will recognize as acceptable for use by licensed and unlicensed manufacturers that collect blood and blood components the full-length donor history questionnaire and accompanying materials (Version No. 1, dated April 2004) prepared by the Interorganizational Uniform Donor History Questionnaire Task Force. The DHQ documents provide a specific process for administering questions to donors of blood and blood components to determine their eligibility to donate consistent with FDA requirements and recommendations. FDA believes the DHQ documents will assist manufacturers in complying with the regulations under part 640 (21 CFR part 640). The guidance also advises licensed manufacturers of blood and blood components how to report the change to implement the DHQ documents described in the guidance to FDA under § 601.12 (21 CFR 601.12).

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection(s) of information in §§ 601.12, 606.160, 640.3, and 640.63 cited in the guidance have been approved by OMB under OMB control numbers 0910–0338 and 0910–0116.

## III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 3, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–10753 Filed 5–11–04; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Amendment to a Notice of Availability of Funds Announced in the HRSA Preview—Primary Health Care Programs: New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act (NDSNS); CFDA Number 93.224; HRSA–04–034

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Amendment to a notice of availability of funds.

**SUMMARY:** A notice of availability of funds announced in the HRSA Preview, "Primary Health Care Programs: New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act HRSA–04–034," was published in the **Federal Register** on September 4, 2003 (Volume 68, Number 171), FR Doc. 03–22427. On page 52653, under announcement HRSA–04–034, the second application deadline date is extended to June 18, 2004. There are no other changes.

**FOR FURTHER INFORMATION CONTACT:** Tonya Bowers, HRSA/Bureau of Primary Health Care; 301–594–4300.

**SUPPLEMENTARY INFORMATION:** Program Information Notice 2004–02, "Requirements of Fiscal Year 2004 Funding Opportunity for Health Center New Access Point Grant Applications," and application guidance is available at the Bureau of Primary Health Care Web page: *http://www.bphc.hrsa.gov/pinspals/.*

Dated: May 5, 2004.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 04–10754 Filed 5–11–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[CGD08–04–015]**

### Lower Mississippi River Waterway Safety Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

**DATES:** The next meeting of LMRWSAC will be held on Tuesday, May 18, 2004, from 9 a.m. to 12 p.m. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before May 12, 2004. Requests to have a copy of your material distributed to each member of the committee in advance of the meeting should reach the Coast Guard on or before May 4, 2004.

**ADDRESSES:** The meeting will be held in the Crescent City Room Suite 1830 at the World Trade Center Building, 2 Canal Street, New Orleans, Louisiana. This notice is available on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) Rick Paciorka, Committee Administrator, telephone (504) 589–4222, fax (504) 589–4241. Written materials and requests to make presentations should be mailed to Commanding Officer, Marine Safety Office New Orleans, Attn: LT Paciorka, 1615 Poydras Street, New Orleans, LA 70112.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

#### Agenda of Meeting

*Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC).* The agenda includes the following:

(1) Introduction of committee members.
(2) Remarks by CAPT R. W. Branch, Executive Director.
(3) Approval of the November 18, 2003, minutes.
(4) Old business:
(a) Captain of the Port status report.
(b) VTS update report.
(c) PORTS update report.
(5) New business.
(6) Next meeting.
(7) Adjournment.

#### Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than May 12, 2004. Written material for distribution at the meeting should reach the Coast Guard no later than May 12, 2004. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than May 4, 2004.

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: May 3, 2004.

**R.F. Duncan,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 04–10804 Filed 5–7–04; 3:43 pm]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

### Notice of Availability for Public Viewing of Draft Programmatic Environmental Assessment Concerning CBP's Use of the Vehicle and Cargo Inspection System (VACIS) at Various Sea and Land Ports of Entry

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces that a draft Programmatic Environmental Assessment (PEA) regarding potential environmental impacts resulting from Customs and Border Protection's (CBP) deployment of the Vehicle and Cargo Inspection System (VACIS) is available for public review and comment. The VACIS system will be used at various ports of entry throughout the United States and Puerto Rico and is designed to provide a significant non-intrusive (gamma ray) inspection capability to assist CBP in its mission to prevent the entry of contraband into the United States. CBP will consider comments before issuing a final PEA and will then issue a draft Supplemental Environmental Assessment covering each local site affected to assess the environmental impact on local conditions.

**DATES:** The draft PEA will be available for public review for a 30-day period beginning on May 12, 2004. Written comments must be received by June 28, 2004.

**ADDRESSES:** Written comments may be submitted to U.S. Customs and Border Protection, Suite 1575, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Attn: Mr. Thomas Nelson. Copies of the draft PEA will be available for viewing at the above address. Copies may also be obtained by calling 202/344–2975 and by accessing the following Internet address (click on "Recent **Federal Register** Notices"): *http://www.cbp.gov/xp/cgov/toolbox/legal.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Nelson at 202/344–2975 or at *THOMAS.Nelson@associates.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

*The VACIS System*

CBP's Vehicle and Cargo Inspection System (the VACIS system) provides a means for combatting the smuggling of contraband, including implements of terrorism, into the United States. The VACIS system employs a non-intrusive inspection technique that uses low energy gamma radiation technology; it allows CBP inspectors to inspect for contraband without having to physically enter into or unload motor vehicles, containers, or other conveyances. The system is designed to augment the capabilities of the CBP inspector and enhance the efficiency and effectiveness of CBP's enforcement mission. Deployment of VACIS technology is already underway and will continue at various land and sea ports of entry throughout the United States and Puerto Rico. Given the serious nature of CBP's mission to protect the nation's borders from terrorism, it is envisioned that all ports are candidates for deployment of VACIS technology in the future.

The VACIS system consists of four configurations, described as follows:

(1) A semi-permanent version designed for inspection of motor vehicles and cargo containers at Customs ports of entry (VACIS II);

(2) A truck-mounted version designed for high-portability inspection of motor vehicles and cargo containers (Mobile VACIS);

(3) A fixed version designed specifically for installation along railroad rights of way for the inspection of railroad cars (Rail VACIS); and

(4) A Fixed Pallet Gamma Ray (FPGR) system designed for inspection of items stored on pallets and in boxes or crates (Pallet VACIS).

*Public Review of the Draft Programmatic Environmental Assessment*

Pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of the Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), CBP has prepared a draft Programmatic Environmental Assessment (PEA) covering the deployment of the VACIS system.

This notice announces a 30-day period for public review of the draft PEA and a 45-day period for submitting comments to CBP, both periods commencing on the date this document is published in the **Federal Register.**

*Evaluation of Environmental Impact*

For all proposals of major Federal actions that significantly affect the quality of the human environment, NEPA requires that the environmental implications of the proposal are to be explored. To meet this requirement, a Federal agency, in some instances, must produce an Environmental Impact Statement (EIS) that examines the environmental implications (or impacts) of a major Federal action. Under § 1508.18(a) of the CEQ Regulations (40 CFR 1508.18(a)), a major Federal action includes new and continuing agency activities. The VACIS system is a new and continuing CBP activity. In other instances, an agency will prepare an Environmental Assessment preliminary to production of either an EIS or a Finding of No Significant Impact (FONSI). The effect of a FONSI is that an agency will not have to produce an EIS. In still other instances, the agency need not produce either an EA or an EIS.

Under section 8b of Treasury Directive 75–02, an EA must be prepared whenever it appears that an agency action, including the continuance of any action or program already initiated, could constitute a major action significantly affecting the quality of the human environment. An EA is a concise public statement issued by a responsible federal agency that provides sufficient evidence and analysis for determining whether to prepare either an EIS or a FONSI. Under the regulation and section 8d of Treasury Directive 75–02, an EA must describe the proposed action (or the continuing action) and the need for it; briefly describe the environmental impacts of, and alternatives to, the proposed/continued action, including mitigating measures; list the agencies and persons consulted; and provide a brief analysis for determining whether to prepare an EIS or a FONSI.

A Programmatic Environmental Assessment (PEA) is a type of EA which, with respect to a major Federal action, covers relevant environmental matters in a broad and general manner, such as a national program or policy statement. The PEA is later followed by subsequent narrower statements or analyses, such as regional program statements or site-specific statements. The draft PEA announced in this notice evaluates the potential environmental impacts resulting from deployment of the VACIS system as a nationally implemented program. Among the potential impacts evaluated are those regarding: geology and soils, hydrology and water quality, wetlands, vegetation and wildlife, air quality, noise, and radiological consequences. Also, an evaluation of alternatives to the action (deployment of the system) is included, in accordance with CEQ regulations (40 CFR 1501.2(c)).

Substantive comments received from the public and agencies during the comment period will be addressed in, and included as an Appendix to, the final PEA. Notice of issuance of the final PEA will be published in the **Federal Register,** as well as in a newspaper of general circulation in each locality where any VACIS configuration is or will be deployed.

Should CBP determine, based on the information developed and evaluation of substantive comments received, that the design, new construction, and/or operation of VACIS system configurations 1 through 4 will not have a significant impact on the environment, CBP will prepare a FONSI. Notice of the FONSI will be published in the **Federal Register** and in a newspaper of general circulation in each locality where a VACIS configuration is/will be deployed. Should CBP determine that significant environmental impacts exist due to the project, CBP will proceed with preparation of an EIS as required under the NEPA, the CEQ Regulations (40 CFR part 1502), and the Department of the Treasury's environmental policies and procedures.

*Supplemental Environmental Assessments*

After issuance of the draft PEA, review of comments received, and issuance of a final PEA, Customs will issue a draft Supplemental Environmental Assessment (also known as a Supplemental Environmental Document or SED) for each affected port. Each SED will address each local

deployment site within a particular port, evaluating potential environmental impacts with respect to the particular conditions present at each site. Each draft SED will solicit public comment, and substantive comments received will be included in the Appendix to a final SED. Notice of the SED will be published in the **Federal Register** and in a local newspaper of general circulation in the particular affected locality. At that time, after receipt and evaluation of comments, CBP will determine whether to prepare a FONSI or an EIS with respect to each affected port.

**Public Review and Comments**

The draft PEA will be available for public review for a period of 30 days beginning on the date this document is published in the **Federal Register.** The draft PEA can be reviewed at the following address: U.S. Customs and Border Protection, Suite 1575, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Contact Mr. Thomas Nelson to make arrangements at 202/344–2975. Copies of the draft PEA may be obtained by telephone request (202/344–2975) or by accessing the following Internet address (click on "Recent **Federal Register** Notices"): *http://www.cbp.gov/xp/cgov/toolbox/legal.*

Comments regarding the draft PEA may be submitted as set forth in the **ADDRESSES** section of this document.

Dated: April 9, 2004.

**Charles R. Armstrong,**

*Acting Assistant Commissioner, Office of Information and Technology.*

[FR Doc. 04–10731 Filed 5–11–04; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4903–N–33]**

### Notice of Submission of Proposed Information Collection to OMB; Inspection Checklist—Additions/Modifications to Manufactured Homes

**AGENCY:** Office of the Chief Information Officer.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting OMB approval to collect information in order to ensure compliance to the manufactured home construction and safety standards.

**DATES:** *Comments Due Date:* June 11, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Inspection Checklist—Additions/Modifications to Manufactured Homes.

*OMB Approval Number:* 2502–Pending.

*Form Numbers:* HUD–94875.

*Description of the Need for the Information and Its Proposed Use:*

HUD is requesting OMB approval to collect information in order to ensure compliance to the manufactured home construction and safety standards. Manufactured homes with attached additions or modifications must undergo an inspection to qualify for FHA insurance.

*Respondents:* Businesses: Manufactured housing producers; Lenders.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 5,000 | 1 | | 0.5 | | 2,500 |

*Total Estimated Burden Hours:* 2,500.

*Status:* Request for approval of a new information collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 5, 2004.

**Wayne Eddins,**

*Departmental PRA Compliance Officer, Office of the Chief Information Officer.*

[FR Doc. 04–10717 Filed 5–11–04; 8:45 am]

**BILLING CODE 4210–72–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4912–N–07]**

## Draft Conformity Determination for the Proposed World Trade Center Memorial and Redevelopment Plan City of New York, New York County, NY

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the federal Conformity Rule, the Lower Manhattan Development Corporation (LMDC) has reviewed the air quality analysis conducted for the proposed World Trade Center Memorial and Redevelopment Plan (Proposed Action). LMDC is a subsidiary of the Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York) and, as the recipient of HUD Community Development Block Grant funds appropriated for the World Trade Center disaster recovery and rebuilding efforts, acts as the responsible entity for compliance with the National Environmental Policy Act (NEPA) and the Clean Air Act, 42 U.S.C. 7401 *et seq.* (particularly sections 7506(c) and (d)) in accordance with 24 CFR 58.4 and 58.5. A Final Generic Environmental Impact Statement (FGEIS) for the Proposed Action has been distributed and is currently available for public review (69 FR 22866, April 27, 2004).

The Proposed Action is located in Lower Manhattan, New York County, which has been designated by the United States Environmental Protection Agency (EPA) as a moderate non-attainment area for particulate matter less than 10 micrometers in aerodynamic diameter ($PM_{10}$), and a severe non-attainment area for ozone. The area is in attainment of all other criteria pollutants: nitrogen dioxide ($NO_2$), lead, sulfur dioxide ($SO_2$) and carbon monoxide (CO). LMDC's review has been conducted consistent with the requirements of 40 CFR part 93, subpart B: "Determining Conformity of General Federal Actions to State or Federal Implementation Plans" issued on November 30, 1993. LMDC has determined that, during some of the construction years, annual nitrogen oxide ($NO_X$) emissions from all the portions of the Proposed Action that may be federally-funded are predicted to exceed the *de minimis* threshold of 25 tons per year; accordingly, LMDC has prepared a general conformity determination to demonstrate that the federally-funded portions of the Proposed Action conform with the ozone State Implementation Plan.

As per the requirement in 40 CFR 93.153(h)(1), this notice lists the proposed activities that are presumed to conform and the basis for these presumptions. A comprehensive presentation of the bases for the conformity presumptions is included in the report entitled "Draft Conformity Determination: World Trade Center Memorial and Redevelopment Plan." This document is currently available for public review and comment.

**DATES:** Comments must be received by 5 p.m. eastern daylight time (e.d.t.) on June 11, 2004.

**ADDRESSES:** The Draft Conformity Determination is available at the following locations:

Chatham Square Library, 33 East Broadway, New York, NY 10002.
New Amsterdam Library, 9 Murray Street, New York, NY 10007.
Hamilton Fish Library, 415 East Houston Street, New York, NY 10002.
Hudson Park Library, 66 Leroy Street, New York, NY 10007.
Community Board #1, 49–51 Chambers Street #715, New York, NY 10007.
Community Board #2, 3 Washington Square Village, New York, NY 10012.
Community Board #3, 59 East 4th Street, New York, NY 10003.

The Draft Conformity Determination is also available on the LMDC Web site at *http://www.RenewNYC.com* in the "Planning, Design & Development" section. All comments should be in writing and sent to Lower Manhattan Development Corporation, Attention: Comments WTC Memorial and Redevelopment Plan/Draft Conformity Determination, One Liberty Plaza, 20th Floor, New York, NY 10006.

**FOR FURTHER INFORMATION CONTACT:** William H. Kelley, Planning Project Manager, Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY 10006; telephone: (212) 962–2300; fax: (212) 962–2431; e-mail: *wtcenvironmental@renewnyc.com.*

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Proposed Action involves the construction of a World Trade Center Memorial and memorial-related improvements, as well as commercial, retail, museum and cultural facilities, new open space areas, new street configurations, and certain infrastructure improvements at the World Trade Center Site (WTC Site) bounded by Liberty, Church, and Vesey Streets and Route 9A and the Southern Site, which comprises two city blocks south of the WTC Site and portions of Liberty Street and Washington Street. A detailed description of the project components and the proposed construction process can be found in the FGEIS. The Draft Conformity Determination available for public review explicitly states which portions of the Proposed Action would be funded by HUD (or by another Federal agency) as well as portions that might be federally-funded (but could be funded by a non-Federal entity); however, all emissions that would be federally-funded or might be federally-funded have been included in the Draft Conformity analysis in order to present a conservative analysis. Specifically, the federally-funded portions of the Proposed Action might include cultural uses in the northwest and southwest quadrants of the WTC Site; the Memorial; public open spaces; deconstruction of the building at 130 Liberty Street (Deutsche Bank); and/or sub-grade construction at the Southern Site.

The Clean Air Act (CAA), as amended in 1990, defines a non-attainment area (NAA) as a geographic region that has been designated as not meeting one or more of the National Ambient Air Quality Standards (NAAQS). The Proposed Action is located in Lower Manhattan, New York County, which has been designated by the EPA as a moderate NAA of the NAAQS for $PM_{10}$ and severe NAA for ozone. No formal designation has been made to date regarding attainment of the NAAQS for fine particulate matter less than 2.5 micrometers in aerodynamic diameter ($PM_{2.5}$), which became effective September 16, 1997. The area is in attainment of all other criteria pollutants: nitrogen dioxide ($NO_2$), lead, sulfur dioxide ($SO_2$) and carbon monoxide (CO). EPA had re-designated New York City as in attainment for CO on April 19, 2002 (67 FR 19337); the CAA requires that a maintenance plan

ensure continued compliance with the CO NAAQS for former NAAs.

A State Implementation Plan (SIP) is a state's plan on how it will meet the NAAQS under the deadlines established by the CAA. In November 1998, New York State submitted its Phase II Alternative Attainment Demonstration for Ozone, which addressed attainment of the NAAQS by 2007, and has recently submitted revisions to the SIP for the attainment of the one-hour ozone NAAQS. These SIP revisions included additional emission reductions that EPA requested to demonstrate attainment of the standard and also update the SIP estimates using a new EPA model to predict mobile source emissions (MOBILE6).

The general conformity requirements in 40 CFR part 93, subpart B, apply to those federal actions that are located in a non-attainment or maintenance area, and that are not subject to transportation conformity requirements at 40 CFR part 51, subpart T, or part 93, subpart A, where the action's direct and indirect emissions have the potential to emit one or more of the six criteria pollutants (or precursors, in the case of ozone) at emission rates equal to or exceeding the prescribed rates at 40 CFR 93.153(b), or where the action encompasses 10 percent or more of a NAA or maintenance area's total emissions inventory for that pollutant. In the case of New York City, the prescribed annual rates are 25 tons of VOCs or $NO_X$ (severe ozone NAA), 100 tons of CO (maintenance area), and in New York County only, 100 tons of $PM_{10}$ (moderate $PM_{10}$ NAA).

LMDC, as the recipient of HUD Community Development Block Grant Funds, has determined that the total annual direct and indirect emissions of CO, VOCs and $PM_{10}$ from the Proposed Action that could be applicable to the general conformity regulations are less than the rates prescribed in 40 CFR part 93 that would trigger the requirement to conduct a general conformity determination. Therefore, a general conformity determination for CO and $PM_{10}$ emissions is not required. Temporarily, during some of the construction years, annual $NO_X$ emissions are predicted to exceed the prescribed rate of 25 tons per year; accordingly, LMDC has concluded that a determination of conformity with the ozone SIP is required.

**B. Requirements of the Conformity Determination**

The purpose of the conformity analysis is to establish that the federally-funded portions of the Proposed Action would conform to the New York ozone SIP, thereby demonstrating that total direct and indirect emissions of the ozone precursors, $NO_X$ and VOC, from the project would not:

- Cause or contribute to any new violation of any standard in the area,
- Interfere with provisions in the applicable SIP for maintenance of any standard,
- Increase the frequency or severity of any existing violation of any standard in any area, or
- Delay timely attainment of any standard or any required interim emission reductions or other milestones in the SIP for purposes of—
  1. A demonstration of reasonable further progress (RFP),
  2. A demonstration of attainment, or
  3. A maintenance plan.

For the purposes of a general conformity determination, direct and indirect emissions are defined as follows (40 CFR 93.152):

- Direct Emissions: Those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action;
- Indirect Emissions: Those emissions of a criteria pollutant or its precursors that—
  1. Are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and
  2. The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

LMDC has concluded that the pollutants of concern regarding the ozone SIP conformity are the ozone precursors: $NO_X$ and VOCs. These precursors were the basis for the ozone SIP analysis for the ozone NAA, and are therefore used for this general conformity determination. LMDC has determined that the only predicted emissions due to the project would include direct emissions from engines operating on-site during construction, and indirect emissions from construction-related vehicles traveling to and from the site.[1]

**C. Presumption of Conformity**

LMDC has reviewed the air quality analysis conducted for the Proposed Action consistent with the requirement of 40 CFR part 93, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans (SIP)."

LMDC has determined that maximum predicted direct and indirect emissions of CO and $PM_{10}$ from the federally-funded portions of the Proposed Action is predicted to be 58.0 and 3.2 tons per year, respectively. The CO and $PM_{10}$ emissions would be below the prescribed level of 100 tons per year as defined at 40 CFR 93.153; therefore, no further conformity determination was deemed necessary for CO or $PM_{10}$.

The Proposed Action would be located in an area designated as a severe ozone non-attainment area under the 1-hour average ozone NAAQS. The direct and indirect emissions during construction of the federally-funded portions of the Proposed Action were predicted to exceed the prescribed level for severe ozone non-attainment areas (25 tons per year of $NO_X$). Therefore, LMDC has reviewed the local $NO_X$ and VOC emissions modeling analyses for the Proposed Action and has determined the following:

- The methods for estimating direct and indirect emissions from the Proposed Action meet the requirements of 40 CFR 93.159. The emissions scenario used in the air quality analysis is expected to produce the greatest off-site impacts on a daily and annual basis. Non-road engine emissions were predicted using the NONROAD model—the latest EPA model for determining emissions from non-road engines. On-road emissions were predicted using the MOBILE6 model—the latest EPA model for predicting emissions from on-road vehicles. Resuspension of road dust by on-road vehicles was estimated using the latest EPA guidance set forth in "AP–42—Compilation of Emission Factors." All of the above emissions modeling procedures were conducted based on the latest EPA guidance.
- The federally-funded portion of the Proposed Action was predicted to result in the following emissions of $NO_X$ and VOCs (total tons per year):

[1] Pursuant to the direction of the Interagency Consultation Group, LMDC is coordinating with the New York State Department of Transportation, New York State Department of Environmental Conservation, EPA, and the Metropolitan Planning Organization in order to make transportation data from the operational phase of the Proposed Action available for inclusion in the regional transportation Best Practices model and in the regional Transportation Improvement Program (TIP).

| Year | 2004 | 2005 | 2006 | 2007 | 2008 | 2009–2013 |
|---|---|---|---|---|---|---|
| $NO_X$ | 4.2 | 61.4 | 39.6 | 19.2 | 16.1 | None. |
| VOCs | 0.4 | 6.2 | 3.6 | 1.5 | 1.3 | None. |

• Pursuant to 40 CFR 93.158(a)(5)(i)(A), the New York State Department of Environmental Conservation has determined and documented that the total of direct and indirect VOC and $NO_X$ emissions from the federally-funded portions of the Proposed Action, together with all other emissions in the non-attainment area, would not exceed the emissions budget specified in the "New York State Implementation Plan for Ozone—Phase II Alternative Attainment Demonstration."

• The Proposed Action does not cause or contribute to any new violation, or increase the frequency or severity of any existing violation, of the standards for the pollutants addressed in 40 CFR 93.158.

• The Proposed Action does not violate any requirements or milestones in the ozone SIP.

Based on these determinations, the federally-funded portions of the Proposed Action are presumed to conform to the applicable SIPs for the project area. The activities that are presumed to conform include construction-related activities of the portions of the Proposed Action that may be federally-funded.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: May 5, 2004.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 04–10718 Filed 5–11–04; 8:45 am]

**BILLING CODE 4210–29–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

**Marine Mammals**

| Permit number | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 082017 | S. Mark Rayburg | 69 FR 5568; February 5, 2004 | April 8, 2004. |
| 082019 | Robert M. Stuck | 69 FR 5568; February 5, 2004 | April 8, 2004. |
| 083232 | Allen Dearmond | 69 FR 8984; February 26, 2004 | April 6, 2004. |
| 083284 | Allen Dearmond | 69 FR 8984; February 26, 2004 | April 8, 2004. |

Dated: April 16, 2004.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04–10769 Filed 5–11–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR 120 5882 CC99; HAG# 04–171]**

### Notice of Public Meeting, Coos Bay Resource Advisory Committee Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Bureau of Land Management (BLM) Coos Bay District Resource Advisory Committee (RAC) Meeting as identified in section 205 (f) (2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393 (the Act).

**SUMMARY:** The BLM Coos Bay District RAC is scheduled to meet on August 24, 2004, from 9 a.m. until 4 p.m. at the BLM Coos Bay District Office. The BLM Office is located at 1300 Airport Lane in North Bend, Oregon. The purpose of this meeting will be for the RAC to recommend for funding for Title II projects, as identified under Public Law 106–393. There will be an opportunity for the public to address the RAC at approximately 11 a.m. at this meeting. The RAC may also meet on August 25, 2004, for the same purpose. The need for this meeting will be dependent upon the progress made in making recommendations at the August 24th meeting. The scheduled meeting time and location for the August 25th meeting will be the same as for the meeting scheduled on August 24th.

**FOR FURTHER INFORMATION CONTACT:** Sue Richardson, District Manager, at 756–0100 or Glenn Harkleroad, District Restoration Coordinator, at 751–4361 or *glenn_harkleroad@or.blm.gov*. The mailing address for the BLM Coos Bay District Office is 1300 Airport Lane, North Bend, Oregon 97459.

**SUPPLEMENTARY INFORMATION:** Additional information about the Coos Bay RAC agenda can be found at *http://www.or.blm.gov/coosbay*. A meeting agenda will be posted at this site as the meeting date nears.

Dated: May 3, 2004.

**Sue E. Richardson,**

*Coos Bay District Manager.*

[FR Doc. 04–10723 Filed 5–11–04; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### American Aviation Heritage National Historic Landmark Theme Study

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of theme study.

**SUMMARY:** Notice is hereby given that the National Park Service, in cooperation with the United States Air Force is preparing a National Historic Landmark Theme Study on the history of American Aviation. The purpose of this study is to develop a historic context on the story of American Aviation and to identify and prioritize potential National Historic Landmarks.

**FOR FURTHER INFORMATION CONTACT:** John H. Sprinkle, Jr., Ph.D., National Register, History and Education (2280), National Park Service, 1849 C Street, NW., Room NC 400, Washington, DC 20240. Telephone 202–354–2228.

Dated: April 9, 2004.

**Carol D. Shull,**

*Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places, National Register, History and Education, National Park Service.*

[FR Doc. 04–10705 Filed 5–11–04; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 1, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 27, 2004.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**KANSAS**

**Brown County**

Delaware River Warren Truss Bridge, (Metal Truss Bridges in Kansas 1861—1939 MPS) Coyote Rd., 190th St., 4.1 mi. S, 0.5 mi. E of Fairview, Fairview, 04000580

**Saline County**

Lakewood Park Bridge, (Metal Truss Bridges in Kansas 1861—1939 MPS) One Lakewood Dr., 0.01 mi. N of jct. with Iron Ave., Salina, 04000579

**MISSOURI**

**Benton County**

Sander, Augustus, House, (Cole Camp, Missouri MPS) 408 W. Jefferson St., Cole Camp, 04000581

**St. Francois County**

Courthouse Square Historic District, Roughly bounded by W. Spring St., N. Washington St., W. Harrison St., and A St., Farmington, 04000582

**NEW HAMPSHIRE**

**Coos County**

Mountain View House, 120 Mountain View Rd., Whitefield, 04000588

**Hillsborough County**

Dunlap Building, 967 Elm St., Manchester, 04000587

**NORTH CAROLINA**

**Buncombe County**

Clingman Avenue Historic District, Roughly along Clingman Ave., from Hillard Ave. to Haywood Ave., Asheville, 04000583

**Macon County**

Bank of French Broad, 100 Main St., Marshall, 04000584

**Rutherford County**

Main Street Historic District (Boundary Expansion), 186 Mill St., Forest City, 04000585

**Watauga County**

Valle Crucis Historic District, Along NC 194 and NC 1112 (Broadstone Rd.), Valle Crucis, 04000586

**SOUTH CAROLINA**

**Greenville County**

Gilfillin and Houston Building, 217–219 E. Washington St., Greenville, 04000589

**Greenwood County**

Magnolia Cemetery, 416 Magnolia Ave., Greenwood, 04000590

**TEXAS**

**Bexar County**

Heidgen, Johann and Anna, House, 121 Starr St., San Antonio, 04000591

**UTAH**

**Sanpete County**

Nielson, John R., Cabin, Manti Canyon, Manti-La Sal National Forest, Manti, 04000592

A request for MOVE has been made for the following resource:

**FLORIDA**

**Duval County**

Brewster Hospital, 915 W. Monroe St., Jacksonville, 76000588.

[FR Doc. 04–10706 Filed 5–11–04; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 24, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 27, 2004.

**Carol D. Shull,**

*Keeper of the National Register of Historic Places.*

**ALABAMA**

**Chilton County**

Gragg Field Historic District, 700 Airport Rd., Clanton, 04000557

**Colbert County**

Carter, Clyde, House, 300 Lime Kiln Rd., Ford City, 04000559

**Crenshaw County**

Brantley Historic District, Roughly bounded by Sasser St, Fulton Ave., Peachtree St. and Wyatt, and Central of Georgia RR, Brantley, 04000558

**Jefferson County**

Flintridge Building, 6200 E. J. Oliver Blvd., Fairfield, 04000560

**Madison County**

Gurley Historic District, Section Line St., Railroad St., Maple Blvd. and Church St. bet. Gurley Pike and Jackson St., Gurley, 04000562

**Talladega County**

Sylacauga Historic Commercial District, Roughly bounded by Broadway Ave., W. 1st., Anniston Ave., W 4th St., Sylacauga, 04000563

**FLORIDA**

**Miami-Dade County**

Ocean Spray Hotel, 4130 Collins Ave., Miami Beach, 04000564

**Polk County**

Biltmore—Cumberland Historic District, Roughly Bounded by E. Lime St., Bartow Rd., Hollingsworth Rd., Lake Horney, McDonald Pl. and S. Ingraham Ave., Lakeland, 04000565

**MASSACHUSETTS**

**Berkshire County**

Hyde School, 100 High St., Lee, 04000566

**NORTH CAROLINA**

**Buncombe County**

Black Mountain Downtown Historic District, Black Mountain Ave., Sutton Ave., Cherry, Broadway and State Sts., Black Mountain, 04000570

Brigman—Chambers House, NC 1003, 0.6. mi. W of jct. with NC 2118, Weaverville, 04000573

**Durham County**

Morehead Hill Historic District (Boundary Increase), (Durham MRA), Includes portions of Arnette, Vickers, Yancey, Parker and Wells Sts., Durham, 04000567

Trinity Park Historic District (Boundary Increase), (Durham MRA), Roughly bounded by Trinity Historic District, N. Buchanan Blvd., W. Club Blvd., Woodland Dr., and N. Duke St., Durham, 04000568

**Union County**

Piedmont Buggy Factory, 514 Miller St., Monroe, 04000569

**RHODE ISLAND**

**Newport County**

CORONET (Wooden Hull Schooner Yacht), 440 Thames, Newport, 04000571

**VIRGINIA**

**Charlottesville Independent city**

Monroe Hill, 252 and 256 McCormick Rd., Charlottesville (Independent City), 04000575

**Halifax County**

Staunton River Bridge Fortification, Address Restricted, Randolph, 04000577

**Henrico County**

Clarke—Palmore House, 904 McCoul St., Richmond, 04000576

Richmond Independent city Manchester Industrial Historic District (Boundary Increase), 700 Block of Stockton St., Richmond (Independent City), 04000574

Maury Street Marker, Jefferson Davis Highway, (UDC Commemorative Highway Markers along the Jefferson Davis Highway in Virginia) Jct. of Maury St. and Jefferson Davis Highway, Richmond (Independent City), 04000572

A request for REMOVAL has been made for the following resources:

**INDIANA**

**Morgan County**

Burton Lane Bridge Burton Ln. Over Indian Cr., .3 mi. S of IN 37 Martinsville (vicinity) 97000302

Hastings Schoolhouse (Indiana's Public Common and High Schools MPS) 1/5 mi. S. of Jct. Hacker Creek Rd. And Liberty Church Rd. Martinsville (vicinity) 99000299

A request for a MOVE has been made for the following resource:

**KANSAS**

**Geary County**

Wetzel, Christian, Cabin About 2 mi. E of Junction City at jct. Of I–70 and KS 57 Junction City (vicinity) 73000757

[FR Doc. 04–10707 Filed 5–11–04; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 19, 2003, and published in the **Federal Register** on January 27, 2004, (69 FR 3946), Cambrex North Brunswick, Inc., Technology Center of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by letter to the Drug Enforcement Administration for registration as a bulk manufacturer of Sufentanil (9740), a basic class of Schedule II controlled substance.

The firm plans to manufacture Sufentanil to distribute in bulk to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cambrex North Brunswick, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Cambrex North Brunswick, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: April 23, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04–10801 Filed 5–11–04; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 19, 2003, and published in the **Federal Register** on January 27, 2004, (69 FR 3946), Cedarburg Pharmaceuticals, LLC, 870 Badger Circle, Grafton, Wisconsin 53024, made application by letter to the Drug Enforcement Administration for registration as a bulk manufacturer of Fentanyl (9801), a basic class of Schedule II controlled substance.

The firm plans to manufacture in bulk for distribution to customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cedarburg Pharmaceuticals, LLC, to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Cedarburg Pharmaceuticals, LLC, to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: April 23, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04–10799 Filed 5–11–04; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 24, 2003, and published in the **Federal Register** on January 27, 2004, (69 FR 3946), Noramco, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Morphone-N-Oxide (9307) | I |
| Codeine-N-Oxide (9053) | I |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |

The firm plans to support its other manufacturing facility with manufacturing and analytical testing.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: April 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04–10797 Filed 5–11–04; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 24, 2003, and published in the **Federal Register** on January 27, 2004, (69 FR 3946), Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amphetamine (1100) | II |
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

The firm plans to support its other manufacturing facility with manufacturing and analytical testing.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: April 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04–10798 Filed 5–11–04; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 24, 2003, and published in the **Federal Register** on January 27, 2004, (69 FR 3947), Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |
| Ambobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Codeine (9050) | II |
| Hydrocodone (9193) | II |
| Methadone (9250) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Siegfried (USA), Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Siegfried (USA), Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, ffice of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: April 28, 2004.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 04–10800 Filed 5–11–04; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,022]**

### Advanced Micro Devices (AMD), C4 Bump, Austin, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 15, 2004 in response to a worker petition filed on behalf of workers at Advanced Micro Devices, C–4 Bump, Austin, Texas. These workers are part of the company's vertically integrated manufacturing of microprocessor chips at Advanced Micro Devices, Fab 25, Austin, Texas.

The petitioning group of workers is covered by an active certification issued on July 9, 2003 and which remains in effect (TA–W–50,283). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of February 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade, Adjustment Assistance.*

[FR Doc. 04–5087 Filed 5–11–04; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Program Year (PY) 2002 and PY 2003 Workforce Information Core Products and Services Grants

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. PRA95 helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

**DATES:** Submit comments on or before July 12, 2004.

**ADDRESSES:** Send comments to Mr. Anthony Dais, Chief, Division of USES/ALMIS, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Ave., NW., Rm. S–4231, Washington, DC 20210, 202–693–2784 (this is not a toll-free number) or *dais.anthony@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Olaf Bjorklund, Division of USES/ALMIS, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Ave., NW., Rm. S–4231, Washington, DC 20210, 202–693–2870 (this is not a toll-free number) or *bjorklund.olaf@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 15 of the Wagner-Peyser Act as amended by Section 309 of the Workforce Investment Act of 1998 (Public Law 105–220), requires state agencies to consult with customers about the relevance of the information disseminated through the statewide employment statistics system, in order to continuously improve the system. To carry out this requirement and to increase accountability for the expenditure of grant funds for workforce information, the Employment and Training Administration (ETA) submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) on August 15, 2002, proposing that beginning in PY 2002, a condition for receiving grant funds would be a requirement that states conduct an assessment of customer satisfaction with state produced workforce information products and services and include a summary of the results of the assessment and a description of any actions to be taken to improve the system in a required annual performance report.

States were also required to provide additional narrative in the annual grant plan, describing the statewide employment statistics system and how the system supports the State's WIA/Wagner-Peyser Five Year Strategic Plan, and a description of the state's planned strategy for assessing customer satisfaction with state produced workforce information. The OMB approved the information collection for 390 days on November 5, 2002, with an expiration date of December 31, 2003. OMB has granted an extension of the expiration date to June 30, 2004.

#### II. Desired Focus of Comments

Currently, the ETA is soliciting comments concerning the proposed continuation of the collection of information for the reporting requirements specified in the PY 2002 Workforce Information Core Products and Services Planning Guidance, issued on January 9, 2003. The same PY 2002 information collection requirements are also required by the PY 2003 Workforce Information Core Products and Services Planning Guidance, issued on October 15, 2003. Comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed continuation of the ICR can be obtained by contacting the office listed above in the addressee section of this notice.

#### III. Current Actions

*Type of Review:* Extension.

*Agency:* Employment and Training Administration.

*Title:* PY 2002 and PY 2003 Workforce Information Core Products and Services grants.

*OMB Number:* 1205–0417.

*Affected Public:* States.

| Activity | Respondents | Responses | Total | Hours | Proposed burden | Approved burden | Difference |
|---|---|---|---|---|---|---|---|
| Annual Plan | 54 | 1 | 54 | 42 | 2,268 | 3,510 | (1,242) |
| Annual Report | 54 | 1 | 54 | 39 | 2,106 | 3,078 | (972) |

| Activity | Respondents | Responses | Total | Hours | Proposed burden | Approved burden | Difference |
|---|---|---|---|---|---|---|---|
| Customer Satisfaction | 54 | 1 | 54 | 292 | 15,768 | 34,668 | (18,900) |
| Respondents Burden | 54 | 1 | 54 | 204 | 11,016 | 5,400 | 5,616 |
| Totals | 54 | 4 | 216 | 577 | 31,158 | 46,656 | (15,498) |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: May 5, 2004.

**Grace A. Kilbane,**

*Administrator, Office of Workforce Investment.*

[FR Doc. 04–10756 Filed 5–11–04; 8:45 am]

BILLING CODE 4510–30–P

## NATIONAL SCIENCE FOUNDATION

### Proposed Changes in the Text of Privacy Act Notices, NSF–50 and NSF–51

**AGENCY:** National Science Foundation.

**ACTION:** Proposed changes in the text of NSF–50: Principal Investigator/Proposal File and Associated Records; and in NSF–51, a subsystem of NSF–50.

**Authority:** 44 U.S.C. 3101; 42 U.S.C. 1870.

**SUMMARY:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation is providing notice of revisions to two existing systems of records. These changes more adequately describe the systems and update the "routine uses." All revised system notices are reprinted in their entirety.

The two revised systems are NSF–50, "Principal Investigator/Proposal File and Associated Records" and NSF–51, "Reviewer/Proposal File and Associated Records." NSF–50 systems include records maintained by NSF as a result of applications for financial support and subsequent evaluation of applicants and their proposals. NSF–50 contains records on research and other proposals jointly submitted by individual applicants (principal investigators) and their home academic or other institutions. NSF makes awards to these institutions under which the individual applicants serve as principal investigators.

NSF–51 is a subsystem of the "Principal Investigator/Proposal File and Associated Records" system and contains the reviewer's name, proposal title and its identifying number, and other related material. The system enables program offices to reference specific reviewers and maintain appropriate files for use in evaluating applications for grants or other support.

In accordance with the requirements of the Privacy Act, NSF has provided a report on the proposed systems revisions to the Office of Management and Budget; the Chairman, Senate Committee on Governmental Affairs; and the Chairman, House Committee on Government Reform and Oversight.

**DATES:** *Effective Date:* Section 552a(3)(4) and (11) of Title 5 of the U.S. Code provide the public thirty days to comment on the routine uses of systems of records. The altered routine uses in this notice will take effect 30 days after publication unless modified by a subsequent notice to incorporate comments received from the public.

**ADDRESSES:** Address all comments concerning this notice to Leslie Jensen, National Science Foundation, Office of the General Counsel, Room 1265, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**SUPPLEMENTARY INFORMATION:** You may submit comments by sending electronic mail (E-mail) to *ljensen@nsf.gov.*

Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Identify all comments sent in electronic e-mail with Subject Line: Comments to proposed changes.

**FOR FURTHER INFORMATION CONTACT:** Leslie Jensen: (703) 292–8060.

**Lawrence Rudolph,**

*General Counsel.*

### Text: Proposed Changes

#### NSF–50

**SYSTEM NAME:**

Principal Investigator/Proposal file and Associated Records.

**SYSTEM LOCATION:**

Files are maintained both centrally and by individual NSF offices and programs at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons who request or have previously requested and/or received support from the National Science Foundation, either individually or through an academic or other institution.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The names of principal investigators and other identifying information, addresses of principal investigators, demographic data, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material. Other related material may include, for example, committee or panel discussion summaries as applicable.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101; 42 U.S.C. 1870.

**PURPOSE OF THE SYSTEM:**

This system enables program offers to maintain appropriate files and investigatory material in evaluating applications for grants or other support. NSF employees may access the system to make decisions regarding which proposals to fund, and to carry out other authorized internal duties. Information on principal investigators is also entered in System 51, "Reviewer/Proposal File and Associated Records," a subsystem of this system, to be used as a source of potential candidates to serve as reviewers as part of the merit review process, or for inclusion on a panel or advisory committee.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosure of information from the system may be made to qualified reviewers for their opinion and evaluation of applicants and their proposals as part of the NSF application review process; and to other Government agencies or other entities needing information regarding applicants or nominees as part of a joint application review process, or in order to coordinate programs or policy.

2. Information from the system may be provided to the applicant or grantee

institution to provide or obtain data regarding the application review process or award decisions, or administering grant awards.

3. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

4. Information from the system may be disclosed to contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties in pursuit of the purposes described above. The contractors are subject to the provisions of the Privacy Act.

5. Information from the system may be merged with other computer files in order to carry out statistical studies or otherwise assist NSF with program management, evaluation, and reporting. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staffs. Disclosures are made only after scrutiny of research protocols and with appropriate controls. The results of such studies are statistical in nature and do not identify individuals.

6. Information from the system may be disclosed to the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

7. Information from the system may be given to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

8. Information from the system may be given to the Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her official capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

9. Records from this system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Various portions of the system are maintained electronically and/or in paper files.

**RETRIEVABILITY:**

Information can be retrieved electronically using an applicant's name or identifying number. An individual's name may be used to manually access material in alphabetized paper files.

**SAFEGUARDS:**

Building is locked during non-business hours. Records are kept in rooms that are locked during non-business hours. Records maintained in electronic form are password protected.

**RETENTION AND DISPOSAL:**

Files are maintained in accordance with approved record retention schedules. Awarded proposals are transferred to the Federal Records Center for permanent retention. Declined proposals are destroyed five years after they are closed out.

**SYSTEM MANAGER(S) AND ADDRESS:**

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**NOTIFICATION PROCEDURE:**

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

**RECORD ACCESS PROCEDURES:**

See "Notification Procedure" above.

**CONTESTING RECORD PROCEDURES:**

See "Notification Procedure" above.

**RECORD SOURCE CATEGORIES:**

Information is obtained from the principal investigator, academic institution or other applicant, peer reviewers, and others.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The portions of this system consisting of investigatory material that would identify reviewers or other persons supplying evaluations of NSF applicants and their proposals have been exempted at 45 CFR part 613 pursuant to 5 U.S.C. 552a(k)(5).

**NSF–51**

**SYSTEM NAME:**

Reviewer/Proposal File and Associated Records.

**SYSTEM LOCATION:**

Files are maintained centrally, and in some cases by individual NSF offices and programs, at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Reviewers who evaluate Foundation applicants and their proposals, either by submitting individual comments, or serving on review panels or site visit teams, or both.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The "Reviewer/Proposal File and Associated Records" system is a subsystem of the "Principal Investigator/Proposal File and Associated Records" system (NSF–50), and contains the reviewer's name, title of proposal(s) reviewed and identifying number, and other related material.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

44 U.S.C. 3101; 42 U.S.C. 1870.

**PURPOSE OF THE SYSTEM:**

This system enables program offices to reference specific reviewers and maintain appropriate files for use in evaluating applications for grants or other support. NSF employees may access the system to help select reviewers as part of the merit review process, and to carry out other authorized internal duties.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of information in this system may be made to:

1. Federal government agencies needing names of potential reviewers and specialists in particular fields.

2. Contractors, grantees, volunteers, experts, advisors, and other individuals who perform a service to or work on or under a contract, grant, cooperative agreement, advisory committee, committee of visitors, or other arrangement with or for the Federal government, as necessary to carry out their duties. The contractors are subject to the provisions of Privacy Act.

3. The Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

4. Another Federal agency, a court, or a party in litigation before a court or in

an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

5. The Department of Justice, to the extent disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest: (a) NSF or any of its components; (b) an NSF employee in his/her capacity; (c) an NSF employee in his/her individual capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect the Agency.

6. Representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Various portions of the system are maintained electronically and/or in paper files.

**RETRIEVABILITY:**

Information can be accessed from the electronic database by addressing data contained in the database, including individual reviewer names. An individual's name may be used to manually access material in alphabetized paper files.

**SAFEGUARDS:**

Building is locked during non-business hours. Records are kept in rooms that are locked during non-business hours. Records maintained in electronic form are password protected.

**RETENTION AND DISPOSAL:**

File is cumulative and is maintained indefinitely.

**SYSTEM MANAGER(S) AND ADDRESS:**

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**NOTIFICATION PROCEDURE:**

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

**RECORD ACCESS PROCEDURES:**

See "Notification Procedure" above.

**CONTESTING RECORD PROCEDURES:**

See "Notification Procedure" above.

**RECORD SOURCE CATEGORIES:**

Information is obtained from the individual reviewers, suggestions from other reviewers, the "Principal Investigator/Proposal File" (NSF–50), other applicants for NSF funding or other members of the research community, and from NSF program officers.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The portions of this system consisting of investigatory material which would identify reviewers or other persons supplying evaluations of NSF applicants and their proposals have been exempted at 5 CFR part 613 pursuant to 5 U.S.C. 552a(k)(5).

[FR Doc. 04–10802 Filed 5–11–04; 8:45 am]
BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–51 EA 04–081]**

### Entergy Nuclear Operations, Inc., Indian Point Nuclear Plant, 440 Hamilton Avenue, White Plains, New York 10601; Order Modifying License (Effective Immediately)

I

Entergy Nuclear Operations, Inc. (ENO) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR Part 50, and 10 CFR Part 72. This Order is being issued to ENO who has identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require ENO to maintain safeguards contingency plan procedures in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1[1] of this Order, on ENO who has indicated near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission also recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at ENO's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. ENO's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the

[1] Attachment 1 contains SAFEGUARDS information and will not be released to the public.

public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72 and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. ENO shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. ENO shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before spent fuel is initially placed in the ISFSI.

B. 1. ENO shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. If ENO considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, ENO must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, ENO must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. ENO shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. ENO shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

ENO's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by ENO of good cause.

IV

In accordance with 10 CFR 2.202, ENO must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than ENO requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by ENO or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), ENO may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of May 2004.

**Jack Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04–10736 Filed 5–11–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–184]**

### National Institute of Standards and Technology (NIST); Notice of Receipt and Availability of Application for Renewal of the National Institute of Standards and Technology Reactor (the NBSR) Facility Operating License No. TR–5 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated April 9, 2004, from the National Institute of Standards and Technology (NIST), filed pursuant to Sections 104c of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 50.51(a), to renew Operating License No. TR–5 for the National Institute of Standards and Technology Reactor (the NBSR). NIST requested renewal of the license to authorize operation of the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the NBSR (TR–5) expires on May 16, 2004. In accordance with 10 CFR 2.109(a), NIST's application for renewal was at least 30 days prior to the expiration of an existing license, and therefore the existing license will not be deemed to have expired until the application has been finally determined. The reactor is located on the NIST campus in Gaithersburg, Maryland. The acceptability of the tendered application for docketing, and other matters including an opportunity to request for a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under accession number ML041120161. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available on the NRC Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209, extension 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 29th day of April 2004.

For the Nuclear Regulatory Commission.

**Patrick M. Madden,**

*Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–10732 Filed 5–11–04; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–499]**

### STP Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company acting on behalf of itself and for Texas Genco, LP, the City Public Service Board of San Antonio (CPS), AEP Texas Central Company, and the City of Austin, Texas, (the licensee) to withdraw its March 4, 2004, application for proposed amendment to Facility Operating License No. NPF–80 for the South Texas Project (STP), Unit 2, located in Matagorda County, Texas.

The proposed amendment would have revised the Technical Specifications to allow STP, Unit 2 to change modes with standby diesel generator 22 inoperable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 23, 2004 (69 FR 13596). However, by letter dated April 29, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 4, 2004, and the licensee's letter dated April 29, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of May 2004.

For the Nuclear Regulatory Commission.

**Michael Webb,**

*Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–10735 Filed 5–11–04; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–52; EA 04–080]**

### In the Matter of Tennessee Valley Authority; Browns Ferry Nuclear Plant, 6A Lookout Place, 1101 Market Street, Chattanooga, Tennessee 37402–2801; Order Modifying License (Effective Immediately)

**I**

Tennessee Valley Authority (TVA) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR part 50, and 10 CFR part 72. This Order is being issued to TVA who has identified near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require TVA to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

**II**

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order

to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on TVA who has indicated near term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at TVA's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. TVA's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety and interest require that this Order be effective immediately.

## III

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR § 2.202 and 10 CFR parts 50, 72 and 73, *It is hereby ordered, effective immediately, that your general license is modified as follows:*

A. TVA shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. TVA shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before spent fuel is initially placed in the ISFSI.

B. 1. TVA shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. If TVA considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, TVA must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, TVA must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. TVA shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. TVA shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

TVA's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by TVA of good cause.

## IV

In accordance with 10 CFR 2.202, TVA must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region II; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than TVA requests a hearing, that

[1] Attachment 1 contains SAFEGUARDS information and will not be released to the public.

person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by TVA or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), TVA may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 7 day of May, 2004.

For the Nuclear Regulatory Commission.

**Jack Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04–10737 Filed 5–11–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8084]**

## Finding of No Significant Impact and Notice of Availability of the Environmental Assessment Addressing a License Amendment Request To Approve Rio Algom Mining LLC's Erosion Protection Design at its Lisbon Uranium Mill Tailings Impoundment Located in San Juan County, UT

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability of an Environmental Assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Jill Caverly, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001, telephone (301) 415–6699 and e-mail *jsc1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Rio Algom Mining LLC's (Rio Algom) Source Materials License SUA–1119.

The proposed action updates the erosion control design for reclamation of uranium mill tailings at Rio Algom's Lisbon uranium mill facility near La Sal, Utah. Appendix A, Title 10, U.S. Code of Federal Regulations (10 CFR), Part 40, requires that former uranium mill sites provide protection for 1000 years against forces that will cause erosion or at a minimum of 200 years. Additionally, regulations require that the design should not require active maintenance. The proposed action is in accordance with the licensee's submittal dated September 3, 2002. License Condition 52 of Source Materials License, SUA–1119, requires Rio Algom to provide plans addressing the overall site stability. This submittal is a response to that requirement.

Pursuant to the requirements of 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, the NRC has prepared an environmental assessment (EA) to evaluate the environmental impacts associated with this request. Based on this evaluation, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed licensing action.

### II. EA Summary

The EA was prepared to evaluate the environmental impacts associated with Rio Algom's Erosion Control Facility Design for surface erosion at its Lisbon uranium mill facility. This action will result in an amendment to its Source Materials License, SUA–1119, License Condition 52.

The proposed amendment to Source Materials License, SUA–1119, will amend License Condition 52F and verify that Rio Algom's design meets the requirements of 10 CFR Part 40, Appendix A. Criterion 6 of 10 CFR Part 40, Appendix A, requires that uranium mill tailings be disposed of in an area that provides reasonable assurance of control of radiological hazards and be effective for 1000 years to the extent reasonably achievable and, in any case, for at least 200 years. In order to meet this requirement, Rio Algom's design must meet the requirements of its license condition. This includes: (1) Addressing potential for erosive velocities in the soil portion of the spillway channel and rock erosion control design of the swale; (2) revising the erosion protection at the toe of the upper tailings dam; (3) considering scour; (4) reviewing rock apron design; (5) address sedimentation; (6) analyzing natural tributary inflows to the diversion channel; (7) reviewing riprap thickness; (8) analyzing strear stress effects; (9) analyzing rock durability and tests bedrock competency; and (10) devising an inspection for the filter and riprap placement.

The EA evaluated the potential impacts of construction and placement of runoff control features including placement of rock riprap. In addition, the EA addressed environmental impacts for rock placement on the top and side slopes of the tailings impoundment, diversion channels, and transition aprons. Construction impacts due to placement and transport of the rock were also considered.

The proposed action is necessary because the regulations and Rio Algom's license require that an engineered barrier be placed over tailings and byproduct material and that the design meets the requirements of 10 CFR Part 40, Appendix A.

### III. Finding of No Significant Impact

Pursuant to 10 CFR Part 51, the NRC has prepared the EA, summarized above. The staff has determined that no significant environmental impacts are expected when the erosion cover is constructed. There will be no significant or additional impacts to the surface features because the erosions protection will be placed on areas where tailings have been covered with an engineered soil barrier and will therefore have no significant effect to wildlife. In addition, the licensee will stabilize areas adjacent to the tailings impoundment where run-off from higher drainage areas enters onto the impoundment but no significant environmental impacts will result from this action.

The proposed NRC approval of the action when combined with known effects on resource areas at the site, including further site remediation, is not anticipated to result in any cumulative impacts at the sites. Therefore, the NRC staff has concluded that there will be no significant environmental impacts on the quality of

the human environment and, accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted.

**IV. Further Information**

The EA for this proposed action, as well as the licensee's request, as supplemented, are available electronically for public inspection in the NRC's Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession Numbers for the licensee's request, as supplemented, are: ML023020664, ML023020657 and ML040720561. The ADAMS Accession number for the EA is ML041190312. Most of the documents referenced in the EA are also available through ADAMS. Documents can also be viewed electronically on the public computers located at NRC's Public Document Room (PDR), O1 F21, One White Flint, 11555 Rockville Pike, MD 20852. The PDR reproduction contractors will copy documents for a fee. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or (301) 415–4737, or by e-mail at *pd@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of May, 2004.

For the Nuclear Regulatory Commission.

**Jill S. Caverly,**

*Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04–10733 Filed 5–11–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–1151]**

## Westinghouse Electric Company LLC., Environmental Assessment and Issuance of Finding of No Significant Impact Related to Proposed Exemption From the Annual Physical Inventory Frequency Requirement of the Fundamental Nuclear Material Control Plan

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Finding of no significant impact and environmental assessment.

**FOR FURTHER INFORMATION CONTACT:** Don Stout, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001, telephone (301) 415–5269 and e-mail *des1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Materials License SNM–1107 to allow a one-time exemption that extends the SNM physical inventory completion date by four days at the Westinghouse Electric Company, LLC, (WEC) facility in Columbia, South Carolina, and has prepared an Environmental Assessment (EA) in support of this action. Based upon the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate, and, therefore, an Environmental Impact Statement (EIS) will not be prepared.

**II. Environmental Assessment**

*Background*

The WEC, Nuclear Fuel, Columbia Fuel Fabrication Facility fabricates nuclear fuel assemblies containing low-enriched uranium oxide for use in commercial nuclear power reactors. The NRC staff has received an exemption request (Ref. 1), dated November 21, 2003, to exempt WEC from 10 CFR 74.31(c)(5), requirements that SNM physical inventories be performed at least every 12 months. In Section 5.3.1 of the licensee's NRC approved Fundamental Nuclear Material Control Plan (FNMC), WEC specifies an annual SNM physical inventory will be performed at an interval of at least every 12 months, plus or minus 30 days. Because the last SNM physical inventory was performed on April 18, 2003, the next physical inventory is required to be completed no later than May 18, 2004. WEC requested a license amendment to allow a one-time exemption that extends the SNM physical inventory completion date to May 22, 2004. The purpose of this document is to assess the environmental consequences of the proposed exemption.

*Review Scope*

The purpose of this EA is to assess the environmental impacts of the exemption request. It does not approve the request. This EA is limited to the extension of the SNM physical inventory date to May 22, 2004, at the Columbia facility. The existing conditions and operations for the Columbia facility were evaluated by the NRC for environmental impacts in a July 12, 1995, EA related to the renewal of the WEC license (Ref. 2). This assessment will determine whether to issue a FONSI or to prepare an EIS. Should the NRC issue a FONSI, no EIS will be prepared.

*Proposed Action*

The proposed action is to grant an exemption from the requirements in 10 CFR 74.31(c)(5) and allow WEC to extend the completion date of the annual SNM physical inventory to May 22, 2004.

*Purpose and Need for Proposed Action*

WEC is currently manufacturing nuclear fuel at the Columbia, South Carolina facility. It is requesting an extension from May 18, 2004, to May 22, 2004, to complete its annual SNM physical inventory. This one-time extension expires on May 26, 2004. WEC is requesting this extension because it has a high production workload for the month of April due to the seasonal refueling activities. WEC has indicated that the high production workload may cause significant challenges to achieving a successful and complete physical inventory.

*Alternatives*

The alternatives available to the NRC are:

1. Approve the exemption request as submitted;
2. No action (*i.e.*, deny the exemption request).

*Affected Environment*

The affected environment for Alternatives 1 and 2 is the WEC site. A full description of the site and its characteristics is given in the 1995 EA related to the renewal of the WEC license (Ref.1). This plant is located in the central part of South Carolina in Richland County, approximately 8 miles southeast of Columbia. The plant is set back approximately 1800 feet from the nearest roadway on a plot of approximately 1,156 acres near the Congaree River. The site is bounded to the north by Highway 48 (Bluff Road), and by the Congaree River to the south. The area adjacent to the site consists primarily of forest.

*Effluent Releases and Monitoring*

A full description of the effluent monitoring program at the site is provided in the 1995 EA related to the renewal of the WEC license (Ref. 2). The WEC–Columbia facility conducts effluent and environmental monitoring programs to evaluate potential public health impacts and comply with the NRC effluent and environmental monitoring requirements. The effluent program monitors the airborne, liquid,

and solid waste streams produced during operation of the facility. The environmental program monitors the air, surface water, sediment, soil, groundwater, and vegetation in and around the Columbia plant.

Airborne, liquid, and solid effluent streams that contain radioactive material generated at the Columbia facility are monitored to ensure compliance with NRC regulations in 10 CFR Part 20. The results of effluent monitoring are reported on a semi-annual basis to the NRC in accordance with 10 CFR 70.59.

Airborne and liquid effluents are also monitored for nonradiological constituents in accordance with State discharge permits. For the purpose of this EA, the State of South Carolina is expected to set limits on effluents under its regulatory control that are protective of health and safety and the local environment.

*Environmental Impacts of Proposed Action*

The proposed action will not result in the release of any chemical or radiological constituents to the environment. In addition, the proposed action will not cause any adverse impacts to local land use, biotic resources, or cultural resources.

*Environmental Impacts of No Action Alternative*

Under the no action alternative, WEC would have to complete the annual SNM physical inventory by May 18, 2004. In order to complete the physical inventory by May 18, 2004, WEC would encounter significant challenges in achieving a successful and complete physical inventory due to a high production workload and the sharing of common resources.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are insignificant. Thus, the staff considers that Alternative 1 is the appropriate alternative for selection.

*Agencies and Persons Contacted*

On April 27, 2004, the NRC staff contacted the South Carolina Department of Health and Environmental Conservation (DHEC) concerning this request. Based on information provided by the NRC, concerning the exemption allowing the extension of the SNM physical inventory completion date, DHEC did not object to granting this exemption and the EA.

The NRC staff has determined that consultation under Section 7 of the Endangered Species Act is not required because the proposed action is administrative in nature and will not affect listed species or critical habitat.

The NRC staff has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties because it is administrative in nature. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

*References*

Unless otherwise noted, a copy of this document and the references listed below will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.*

1. Westinghouse Electric Company (WEC), LLC, Letter to the U.S. Nuclear Regulatory Commission, "Request for One-Time Exemption to Annual SNM Physical Inventory Frequency Requirement of Fundamental Nuclear Material Control (FNMC) Plan—License Number SNM–1107, Docket 70–1151, November 21, 2003," ADAMS No. ML033320331.

2. The U.S. Nuclear Regulatory Commission (NRC), July 1995, "Environmental Assessment for Renewal of Special Nuclear Material License SNM–1107."

**III. Finding of No Significant Impact**

Pursuant to 10 CFR Part 51, the NRC staff has considered the environmental consequences of amending WEC Materials License SNM–1107 to exempt WEC from the annual SNM physical inventory requirement in 10 CFR 74.31(c)(5) and extend the completion date. On the basis of this assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and the Commission is making a finding of no significant impact. Accordingly, preparation of an EIS is not warranted.

**IV. Further Information**

For further details, see the references listed above. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, the 5th day of May 2004.

For the Nuclear Regulatory Commission.

**Robert C. Pierson,**

*Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 04–10734 Filed 5–11–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on May 25, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Tuesday, May 25, 2004—8:30 a.m.–10:30 a.m.**

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named

individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 6, 2004.

**Medhat El-Zeftawy,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 04–10738 Filed 5–11–04; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, May 20, 2004
Thursday, June 3, 2004
Thursday, June 17, 2004
Thursday, July 15, 2004
Thursday, July 29, 2004

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: May 3, 2004.

**Mary M. Rose,**

*Chairperson, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 04–10727 Filed 5–11–04; 8:45 am]

BILLING CODE 6325–49–P

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974, as Amended: Computer Matching Program Between OPM/Centers for Medicare and Medicaid Services, Department of Health and Human Services

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of computer matching program.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, the notice announces a computer matching program that OPM plans to conduct with CMS.

**DATES:** OPM will file a report of the subject matching program with the Committee on governmental Affairs of the Senate, the Committee on Government reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective 40 days after the **Federal Register** notice has been published and the letter to Congress and OMB have been issued.

**ADDRESSES:** Interested parties may comment on this notice by writing to Maurice O. Duckett, Assistant Director for RIS Support Services Programs, Office of Personnel Management, 1900 E. Street, NW., Room 1312, Washington, DC 20415. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Contact Marc Flaster, Chief, Management Information Branch 1900 E Street, NW., Room 4316 Washington, DC 20415, telephone number (202) 606–2115.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the match agreement by the Data Integrity Branch (DIB) of the participating Federal agencies.;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing suspending, terminating or denying an individual's benefits or payments.

**B. OPM Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of OPM's computer matching programs with the requirements of the Privacy Act, as amended.

**Kay Coles James,**

*Director, Office of Personnel Management.*

**Notice of Computer Matching Program, Office of Personnel Management (OPM) With the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services**

*A. Participating Agencies*

OPM and CMS.

*B. Purpose of the Matching Program*

The purpose of this agreement is to establish the conditions under which OPM and CMS can implement the terms and provisions of CMS's Employer Voluntary Data Sharing Agreement, which will also include the Internal Revenue Service/Social Security Administration/CMS Data Match Questionnaire process. Under the terms of the matching agreement, OPM agrees to provide coverage eligibility data to CMS ad furthermore CMS agrees to consider our compliance with this agreement to constitute satisfaction of its statutory obligations. CMS agrees to provide coverage eligibility data to OPM on active as well as inactive employees and their spouses for whom the employer provides group health coverage. These disclosures will provide CMS with information for use in determining the extent to which any Medicare beneficiary is covered under the Federal Employees Health Benefits Programs (FEHBP). These disclosures will enable CMS to identify instances where Medicare is the secondary payer for working, nonPostal, Federal civilian employees and their spouses who have primary insurance because of their Federal employment or because of their spouse's Federal employment. This computer-matching program will result in systematic, improved coordination of benefits between Medicare and FEHBP through data sharing.

*C. Authority for Conducting the Matching Program*

The provisions of the Social Security Act known as the Medicare Secondary Payer (MSP) laws, codified at 42 U.S.C. 1395y(b), shift from Medicare to certain group health plans (GHPs) primary payment responsibility for certain Medicare beneficiaries to the extent that the medical expenses of those Medicare beneficiaries are also covered by a GHP. The MSP provisions are found at the above citation, as amended, excepting 42 U.S.C. 1395y(b)(2)(A)(ii) and the regulations related to the statute, as amended and currently found at 42 CFR 411.20–.37, 411.100–.130, 411.160–.175, and 411.200–.206.

*D. Categories of Records and Individuals Covered by the Match*

OPM will disclose information from two major records systems, the Central Personnel Data File, last published as OPM/GOV–1, General Personnel Records System (65 FR 24732, April 27, 2000), and the annuity roll systems, last published as OPM/Central-1, Civil Service Retirement and Insurance Records, (64 FR 54930, October 8, 1999, as amended May 3, 2000 (65 FR 25775). CMS will use OPM's submission of data to update the CMS Common Working File, System Number 09–70–0526, published at 53 FR 52792, December 29, 1988. CMS will further use its Enrollment Data Base, found in System No. 09–70–0502 to determine Medicare eligibility for the records exchanged between the two agencies.

*E. Privacy Safeguard and Security*

The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's "Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988." Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe from access by unauthorized personnel during duty hours as well as nonduty hours or when not in use. Records used in this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records.

Both OPM and CMS have the right to make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

*F. Inclusive Dates of the Match*

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–10726 Filed 5–11–04; 8:45 am]

BILLING CODE 6325–38–M

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–15419]**

## Issuer Delisting; Notice of Application of Celanese AG To Withdraw Its Ordinary Shares, No Par Value, From Listing and Registration on the New York Stock Exchange, Inc.

May 6, 2004.

On May 3, 2004, Celanese AG, a Federal Republic of Germany corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Ordinary Shares, no par value ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Management ("Board") of the Issuer unanimously approved a resolution on April 27, 2004 to withdraw the Issuer's Security from listing on the NYSE. The Board states that the following reasons factored into its decision to withdraw the Security: (1) The acquisition by BCP Crystal Acquisition GmbH & Co. KG ("Bidder") of 84.32% of the Security, pursuant to a Voluntary Public Takeover Offer ("Offer") that was launched on February 2, 2004, and whose subsequent acceptance period expired on April 19, 2004; (2) the disclosure by the Bidder in the Offer Document ("Document") relating to the Offer, which was published in Germany and filed with the Commission as an Exhibit to the Bidder's amended Form Schedule TO on February 2, 2004, that the Bidder intends to acquire 100% of the Security and seeks to effect the delisting of the Security from the NYSE as promptly as possible following the consummation of the Offer; (3) the significant decrease in average trading volume of the Security on the NYSE from 48,133 shares per day during the first three weeks of April 2003 to 7,000 shares per day during the same three weeks in 2004, and to 2,520 shares per day since the expiration of the Offer's subsequent acceptance period; (4) the disproportionately high costs and obligations associated with the continued listing of the Security on the NYSE given the limited trading volume and the Bidder's intent to acquire 100% of the Security; (5) the Security will continue to be listed on the Frankfurt Stock Exchange until the Issuer's shareholders resolve to revoke

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

the Security's admission in accordance with applicable law; and (6) in the event of a delisting of the Securities from the Frankfurt Stock Exchange, the Bidder must offer the Issuer's minority shareholders fair cash compensation in exchange for their Security calculated in accordance with applicable law.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 28, 2004 comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic comments:

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–15419 or;

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–15419. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 04–10758 Filed 5–11–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

*Federal Register Citation of Previous Announcement:* [69 FR 25448, May 6, 2004]

*Status:* Closed meeting.

*Place:* 450 Fifth Street, NW., Washington, DC.

*Date and Time of Previously Announced Meeting:* Tuesday, May 11, 2004 at 2:30 p.m.

*Change in the Meeting:* Cancellation of meeting.

The Closed Meeting scheduled for Tuesday, May 11, 2004 has been cancelled. For further information please contact the Office of the Secretary at (202) 942–7070.

Dated: May 10, 2004.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 04–10871 Filed 5–10–04; 10:59 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49663; File No. SR–NASD–2004–036]**

### Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Revise and Update the Fee Schedule for OTC Bulletin Board Historical Trading Activity Reports

May 6, 2004.

### I. Introduction

On March 1, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise and update the fee schedule for the OTC Bulletin Board ("OTCBB") historical trading activity reports. The proposal was published for comment in the **Federal Register** on April 1, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

### II. Description of Proposed Rule Change

The proposed rule change would revise the fee schedule for the OTCBB historical trading activity reports that are available through the OTCBB website ("OTCBB.com"). The proposal would establish that the fees that Nasdaq would charge for the Issues Summary Statistics reports and the Intra-Day Quote and Intra-Day Time and Sales Data reports of OTCBB securities are identical to the fees assessed for similar reports for Nasdaq securities that are available through the website for Nasdaq traders ("NasdaqTrader.com"). In addition, the proposed rule change would establish a new fee for an up-to-date directory listing the contact information of all OTCBB issuers.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[4] Specifically, the Commission finds that the proposal is consistent with the requirements of Section 15A(b)(5) and (b)(6) of the Act.[5] Section 15A(b)(5) requires that the rules of a registered national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Section 15A(b)(6) requires, among other things, that the rules of national securities association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the pricing structure for the historical trading activity reports available through OTCBB.com for OTCBB securities is identical to the pricing structure for similar reports available through NasdaqTrader.com for Nasdaq securities. The Commission has previously determined that the fee structure for these NasdaqTrader.com

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49486 (March 26, 2004), 69 FR 17254.

[4] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*(b)(5) and (b)(6).

reports is consistent with the Act.[6] The Commission believes that a similar fee structure applied to historical data for OTCBB securities is also consistent with the Act. Finally, the Commission believes that the fee that Nasdaq proposes to charge for the All OTCBB Issuer Directory is consistent with the Act.

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2004–036) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–10759 Filed 5–11–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49660; File No. SR–NASD–2004–070]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Permit Shareholder Action by Written Consent

May 6, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 23, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] Nasdaq has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to clarify that listed companies may solicit written consents from shareholders in lieu of a special shareholder meeting.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in brackets.[5]

* * * * *

**4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Small Cap Market Issuers Except for Limited Partnerships**

(a)–(h) No Change.

(i) Shareholder Approval

(1)–(5) No Change.

(6) Where shareholder approval is required, the minimum vote which will constitute shareholder approval shall be a majority of the total votes cast on the proposal. *These votes may be cast* in person, [or] by proxy *at a meeting of shareholders or by written consent in lieu of a special meeting to the extent permitted by applicable state and federal law and rules (including interpretations thereof), including, without limitation, SEC Regulations 14A and 14C. Nothing contained in this Rule 4350(i)(6) shall affect an issuer's obligation to hold an annual meeting of shareholders as required by Rule 4350(e).*

(j)–(n) No Change.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq represents that the proposed rule change is designed to clarify that listed companies may solicit written consents from shareholders in lieu of a shareholder meeting.

In general, state law provides two ways in which matters may be brought before the shareholders of a corporation for their consideration. Shareholders either can take action via a meeting of shareholders (voting in person or by proxy) or by written consent of shareholders in lieu of a meeting. NASD Rule 4350 contains a number of provisions related to shareholder meetings,[6] proxy solicitations[7] and specific actions and transactions that require shareholder approval.[8] State law and a company's charter and bylaws often require shareholder approval of other corporate actions. To the extent an issuer seeks shareholder approval by convening a special meeting of shareholders, NASD Rule 4350 requires that the issuer provide shareholders with a proxy solicitation that conforms to SEC requirements, primarily Rule 14a–1 *et seq.* and Regulation 14A under the Act. Many states permit corporate action without a shareholder meeting upon the written consent of specified percentage of shareholders. In certain circumstances, federal securities laws do not require that the corporation solicit the consent of all shareholders. Instead, Section 14(c) of the Act and Regulation 14C under the Act require that the corporation furnish all shareholders with an information statement that contains substantially the same disclosure as a proxy prior to the date the corporate action is taken.[9]

Nasdaq believes that it is appropriate that its listing standards under NASD Rule 4350(i) permit action by written consent in lieu of a special meeting when such action is permitted by state and federal law. While in the past Nasdaq has interpreted NASD Rule 4350(i) to permit action by written

[6] *See* Securities Exchange Act Release No. 45102 (November 26, 2001), 67 FR 59830 (November 30, 2001) (Order approving SR–NASD–2001–59).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b-4(f)(6).

[5] Nasdaq represents that the proposed rule change is marked to show changes to NASD Rule 4350(i)(6) as currently reflected in the electronic NASD manual available at *www.nasd.com.* No other pending or approved rule filings would affect the text of the Rule.

[6] NASD Rule 4350(e) requires that each issuer must hold an annual meeting of shareholders and provide written notice to Nasdaq.

[7] NASD Rule 4350(g) requires that each issuer solicit proxies and provide proxy statements for all meetings of shareholders and provide copies of such proxy solicitations to Nasdaq.

[8] NASD Rule 4350(i) requires shareholder approval of a variety of transactions including equity compensation plans and arrangements, transactions involving a change in control and sales of discounted stock and other potentially dilutive transactions.

[9] 15 U.S.C. 78n(c) and 17 CFR 240.14C.

consent in lieu of a special meeting, this interpretation is not clear from the text of the rule. In this regard, Nasdaq believes that its interpretation is consistent with standard corporate practice that has long been sanctioned by law. Therefore, Nasdaq believes that the proposed amendment provides greater transparency by inserting this interpretation into the text of the rule. Nasdaq notes that the SEC has approved similar proposed rule changes by the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex") to permit shareholder action by written consent.[10]

Nasdaq believes that annual meetings serve a useful purpose by providing shareholders with the opportunity to meet with representatives of management and the board of directors. Therefore, written consent would only be permitted in lieu of special meetings of shareholders and NASD Rule 4350(e) will continue to require that issuers hold annual meetings of shareholders.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[11] in general and with Section 15A(b)(6) of the Act,[12] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Specifically, Nasdaq believes that the proposed rule change will provide greater clarity to Nasdaq's listing standards, thereby allowing it to more efficiently address listing and policy matters that often involve investor protection issues and providing greater uniformity with the rules of the NYSE and Amex.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

[10] *See* Securities Exchange Act Release Nos. 46654 (October 11, 2002), 67 FR 64687 (October 21, 2002) (NYSE) and 46904 (November 25, 2002), 67 FR 7244 (December 4, 2002) (Amex).

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(6).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective upon filing on April 23, 2004 pursuant to Section 19(b)(3)(A)[13] of the Act and Rule 19b–4(f)(6)[14] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[15]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative waiting period to permit Nasdaq to implement the amendment immediately, thereby enhancing transparency for its listed companies and investors and increasing uniformity in listing standards among stock markets.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative on April 23, 2004, the date it was submitted to the Commission, in order to implement the rule immediately for consistency in listing standards among the NYSE, Amex, and Nasdaq.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] As required under Rule 19b–4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–070 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–070 and should be submitted on or before June 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–10760 Filed 5–11–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49661; File No. SR–Phlx–2004–28]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options

May 6, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to establish its equity options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROTs") for the period from May 2004 through July 2004 for the top 120 equity options based on volume statistics from January, February and March 2004,[3] as set forth on the ROT Equity Option Payment for Order Flow Charges Schedule[4] and subject to certain exceptions listed below. The Phlx intends to implement the payment for order flow fees for trades settling on or after May 1, 2004 through July 31, 2004. The rate levels would not change: the top-ranked equity option would be charged a fee of $1.00 per contract; the next 49 equity options would be charged a fee of $.40 per contract; and no fee would be imposed for the remaining equity options in the top 120.[5] The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

EXCHANGE'S ROT EQUITY OPTION PAYMENT FOR ORDER FLOW CHARGES*

| Underlying symbol | Company | Rate |
|---|---|---|
| AMAT .. | Applied Materials, Inc ..... | $.40 |
| AMD .... | Advanced Micro Devices, Inc. | 0.40 |
| AMGN .. | Amgen, Inc ..... | 0.40 |
| AMZN .. | Amazon.com, Inc ..... | 0.40 |
| AMR .... | AMR Corporation ..... | 0.40 |
| *AWE .... | *AT&T Wireless Services Inc.* | *0.40* |
| BAC ..... | Bank of America Corporation. | 0.40 |
| [BBY .... | Best Buy Company Inc ... | 0.40] |
| [BMY .... | Bristol-Meyers Squibb Company. | 0.40] |
| BRCM .. | Broadcom Corporation ... | 0.40 |
| [BSX .... | Boston Scientific Corporation. | 0.40] |
| C ..... | Citigroup, Inc. ..... | 0.40 |
| [CE ..... | Concord E F S Inc. ..... | 0.40] |
| CPN ..... | Calpine Corporation ..... | 0.40 |
| CSCO .. | Cisco Systems, Inc. ..... | 0.40 |
| DELL ... | Dell Computer Corp. ..... | 0.40 |
| *DIS ..... | *The Walt Disney Company.* | *0.40* |
| EBAY ... | eBay, Inc. ..... | 0.40 |
| *ELN ..... | *Elan Corporation PLC* ..... | *0.40* |
| EMC .... | EMC Corp. ..... | 0.40 |
| F ..... | Ford Motor Company ..... | 0.40 |
| GE ..... | General Electric Company. | 0.40 |
| [GM ..... | General Motors Corporation. | 0.40] |
| HPQ ..... | Hewlett-Packard Company. | 0.40 |
| IBM ..... | International Business Machines Corporation. | 0.40 |
| INTC .... | Intel Corporation ..... | 0.40 |
| *IWM ..... | *iShares Russell 200 Index Fund.* | *0.40* |
| *JDSU ... | *Juniper Networks, Inc.* .... | *0.40* |
| [JNJ ..... | Johnson & Johnson ..... | 0.40] |
| *JNPR ... | *Juniper Networks, Inc.* .... | *0.40* |
| JPM ..... | Morgan & Chase Co. (J.P.) | 0.40 |
| [KLAC .. | KLA-Tencor Corporation | 0.40] |
| LU ..... | Lucent Technologies, Inc. | 0.40 |
| *MO ..... | *Philip Morris Companies, Inc.* | *0.40* |
| MOT .... | Motorola, Inc. ..... | 0.40 |
| [MRK ... | Merck & Co., Inc. ..... | 0.40] |
| MSFT ... | Microsoft Corporation ..... | 0.40 |
| MU ..... | Micron Technology, Inc. | 0.40 |
| NEM .... | Newmont Mining Corp. ... | 0.40 |
| NOK ..... | Nokia Corporation ..... | 0.40 |
| *NT ..... | *Nortel Networks Corporation.* | *0.40* |
| [NXTL .. | Nextel Communications Inc., Class A. | 0.40] |
| ORCL .. | Oracle Corporation ..... | 0.40 |
| PFE ..... | Pfizer, Inc. ..... | 0.40 |
| *PSFT ... | *PeopleSoft, Inc* ..... | *0.40* |
| QCOM | QUALCOMM, Inc. ..... | 0.40 |
| QQQ .... | NASDAQ–100 Index Tracking Stock. | .1.00 |
| *RIMM ... | *Research in Motion Ltd.* | *0.40* |
| RMBS .. | Rambus, Inc. ..... | 0.40 |
| *SBC ..... | *SBC Communications, Inc.* | *0.40* |
| SMH .... | Semiconductor HOLDRs | 0.40 |
| SNDK .. | SanDisk Corporation ..... | 0.40 |
| SUNW | Sun Microsystems, Inc. .. | 0.40 |
| TWX .... | Time Warner, Inc. ..... | 0.40 |
| TXN ..... | Texas Instruments, Inc. .. | 0.40 |
| [TYC .... | Tyco International Ltd. .... | 0.40] |
| [UPS .... | United Parcel Service, Inc. | 0.40] |
| *VZ ..... | *Verizon Communications* | *0.40* |
| WMT .... | Wal-Mart Stores, Inc. ..... | 0.40 |
| XMSR .. | XM Satellite Radio Holdings, Inc. | 0.40 |
| [XOM ... | Exxon Mobil Corporation | 0.40] |
| YHOO .. | Yahoo!, Inc. ..... | 0.40 |

*Subject to a 500 contract cap, per individual cleared side of a transaction.

* * * * *

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's payment for order flow fee is imposed on transactions in the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring period for the top 120 equity options encompasses three months and the Exchange files a separate proposed rule change for each three-month trading period. With respect to the payment for order flow fees imposed on trades settling on or after February 1, 2004 through April 30, 2004, for example, the measuring period for the top 120 equity options was based on volume statistics from October, November and December 2003. *See* Securities Exchange Act Release No. 49170 (February 2, 2004), 69 FR 6357 (February 10, 2004) (SR–Phlx–2004–05). For the payment for order flow fees imposed on trades settling on or after May 1, 2004 through July 31, 2004, as set forth in this proposal, the measuring period for the top 120 equity options is based on volume statistics from January, February, and March 2004.

[4] To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than $0.00.

[5] Under the Exchange's payment for order flow program, a 500 contract cap per individual cleared side of a transaction is imposed. Thus, the applicable payment for order flow fee would be imposed only on the first 500 contracts per individual cleared side of a transaction. For example, if a transaction consists of 750 contracts by one ROT, the applicable payment for order flow fee would be applied to, and capped at, 500 contracts for that transaction. Also, if a transaction consists of 600 contracts, but is divided equally among three ROTs, the 500 contract cap would not apply to any such ROT and each ROT would be assessed the applicable payment for order flow fee on 200 contracts, as the payment for order flow fee is assessed on a per ROT, per transaction basis. *See* Securities Exchange Act Release No. 47958 (May 30, 2003), 68 FR 34026 (June 6, 2003) (proposing SR–Phlx–2002–87) and Securities Exchange Act Release No. 48166 (July 11, 2003), 68 FR 42540 (July 17, 2003) (approving SR–Phlx–2002–87).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

According to the Phlx, the Exchange reinstated its payment for order flow program in November, 2002.[6] Under the program, the Phlx charges ROTs a per-contract fee with respect to their transactions in the top 120 most actively traded equity options issues, subject to certain exceptions.[7] The fees are set forth on the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.

1. Purpose

The purpose of the proposed rule change is to establish the payment for order flow fees for the top 120 equity options for trades settling on or after May 1, 2004 through July 31, 2004. The Phlx will file with the Commission a proposed rule change to address changes to the fee schedule for subsequent time periods. The Phlx is not making any other changes to its payment for order flow program at this time.

2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among Phlx members, and that the proposal is consistent with Section 6(b) of the Act[8] and furthers the objectives of Section 6(b)(4) of the Act.[9]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Phlx neither solicited nor received written comments on this proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thnsp; thnsp;[11] thereunder. Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–28 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–28 and should be submitted on or before June 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–10761 Filed 5–11–04; 8:45 am]

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[6] *See* Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR–Phlx–2002–75).

[7] The payment for order flow fee does not apply to specialist transactions or to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. According to the Phlx, the fee is not imposed with respect to the above-specified transactions because the primary focus of the program is to attract order flow from customers. The payment for order flow fee also does not apply to index or foreign currency options.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before July 12, 2004.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Bruce Hodgman, Deputy District

Director, Arizona District Office, Small Business Administration, 2828 North Central Avenue, Suite 800, Arizona, AZ 85004.

**FOR FURTHER INFORMATION CONTACT:** Bruce Hodgman, Deputy District Director, 604–745–7200 or Curtis B. Rich, Management Analyst, 202–205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "SBA Interactive Loan Qualifier".

*Description of Respondents:* General Public that is interested in determining if they meet the basic loan requirements for a SBA guaranteed loan.

*Form No.:* N/A.

*Annual Responses:* 100.

*Annual Burden:* 30.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 04–10762 Filed 5–11–04; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Grosvenor Special Ventures IV, L.P. ("Grosvenor"), 1808 Eye Street, NW., Washington, DC 20006, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2003)). Grosvenor proposes to provide equity financing to InphoMatch, Inc. ("InphoMatch"), 4511 Singer Court, Suite 300, Chantilly, Virginia 20152. The financing is contemplated for expansion activities and working capital.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Grosvenor Venture Partners IV (QP), LP, an Associate of Grosvenor, currently owns greater than 10 percent of InphoMatch, and therefore InphoMatch is considered an Associate of Grosvenor as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 6, 2004.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

[FR Doc. 04–10763 Filed 5–11–04; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW, Washington, DC 20503, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Request for Change in Time/Place of Disability Hearing—20 CFR 404.914(c)(2) and 416.1414(c)(2)—0960–0348.* The information on Form SSA–769 is used by SSA and the State Disability Determination Services (DDSs) to provide claimants with a structured format to exercise their right to request a change in the time or place of a scheduled disability hearing. The information is to be used as a basis for granting or denying requests for changes and for rescheduling hearings. The respondents are claimants who wish to request a change in the time or place of their disability hearing.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 7,483.

*Frequency of Response:* 1.

*Average Burden Per Response:* 8 minutes.

*Estimated Annual Burden:* 998 hours.

2. *Disability Hearing Officer's Report of Disability Hearing—20 CFR 416.1407, 404.917, and 416.1417—0960–0440.* The information on Form SSA–1205–BK is used by the Disability Hearing Officers (DHOs) at the Social Security Administration (SSA) as a guide to conducting and recording disability hearings. It ensures that all of the pertinent issues are considered. The respondents are DHOs in the State Disability Determination Services and Federal DHOs.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 100,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 60 minutes.

*Estimated Annual Burden:* 100,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Farm Self-Employment Questionnaire—20 CFR 404.1095—0960–0061.* Section 211(a) of the Social Security Act requires the existence of a trade or business as a prerequisite for determining whether an individual or partnership may have "net earnings from self-employment." Form SSA–7156 elicits the information necessary to determine the existence of an agricultural trade or business and subsequent covered earnings for Social Security entitlement purposes. The respondents are applicants for Social Security benefits, whose entitlement depends on whether the worker has covered earnings from self-employment as a farmer.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 47,500.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 7,917 hours.

2. *Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103.* Form SSA–7163A-F4 is used by SSA to collect needed information whenever a Social Security beneficiary or claimant reports work on a farm outside the U.S. The information is used to make a determination for work deduction purposes. The respondents are Social Security beneficiaries or claimants who are engaged in farming activities outside the U.S.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 1,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 60 minutes.

*Estimated Annual Burden:* 1,000 hours.

3. *Subpoena-Disability Hearing—20 CFR 404.916(b)(1) and 416.1416(b)(1)—0960–0428.* The information on Form SSA–1272–U4 is used by SSA to subpoena evidence or testimony needed at disability hearings. The respondents are comprised of officers from Federal and State Disability Determination Services (DDSs).

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 36.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 18 hours.

4. *Request for Earnings and Benefit Estimate Statement—20 CFR 404.810—0960–0466.* Form SSA–7004 is used by members of the public to request information about their Social Security earnings records and to get an estimate of their potential benefits. SSA provides information, in response to the request, from the individual's personal Social Security record. The respondents are Social Security number holders who have covered earnings on record.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 800,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 66,667 hours.

5. *Employer Verification of Earnings after Death—20 CFR 404.821 and 404.822—0960–0472.* The information collected on Form SSA–L4112 is used by SSA to determine whether wages reported by an employer are correct, when SSA records indicate that the wage earner is deceased. The respondents are employers who report wages for a deceased employee.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 50,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 8,333 hours.

6. *Medical History and Disability Report, Disabled Child—20 CFR 416.912—0960–0577.* The Social Security Act requires claimants to furnish medical and other evidence to prove they are disabled. Form SSA–3820 is used to obtain various types of information about a child's condition, his/her treating sources and/or other medical sources of evidence. The i3820 allows the claimant for disability benefits to go online and furnish the same information. The Electronic Disability Collect System (EDCS) is an internal collection process. Using EDCS, Field Office (FO) employees key information provided by applicants or their representatives onto EDCS screens, which establish a database that the adjudicating component can access. Both the i3820 and EDCS screens have been designed to capture the same information as the revised paper version of the SSA–3820. The information collected on the SSA–3820 is needed for the determination of disability by the State DDSs. The respondents are applicants for Title XVI (SSI) child disability benefits.

*Type of Request:* Extension of an OMB-approved information collection.

| | SSA–3820 | i3820 | EDCS |
|---|---|---|---|
| Number of Respondents | 366,000 | 2,500 | 157,000 |
| Average Burden per Response (hours) | 1 | 2 | 1 |
| Total Burden (hours) | 366,000 | 5,000 | 157,000 |

Total Estimated Annual Burden: 528,000 hours.

7. *Work History Report—20 CFR 404.1512 and 416.912—0960–0578.* The information collected on form SSA–3369 is needed to determine disability by the State Disability Determination Services (DDSs). The information will be used to document an individual's past work history. The respondents are applicants for disability payments.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 1,000,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 500,000 hours.

8. *Annual Registration Statement Identifying Separated Participants with Deferred Benefits, Schedule SSA—0960–0606.* Schedule SSA is a form filed annually as part of a series of pension plan documents required by section 6057 of the IRS Code. Administrators of pension benefit plans are required to report specific information on future plan benefits for those participants who left plan coverage during the year. SSA maintains the information until a claim for Social Security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for payments from the private pension plan. The respondents are administrators of pension benefit plans or their service providers employed to prepare the schedule SSA on behalf of the pension benefit plan. Below are the estimates of the cost and hour burdens for completing and filing schedule SSA(s). We have used an average to estimate the hour burden. However, the burden may be greater or smaller depending on whether the respondent is a large or small pension benefit plan and how many schedule SSA's are filed in a given year.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 88,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 2.5 hours.

*Estimated Annual Burden:* 220,000 hours.

9. *State Agency Report of Obligations for SSA Disability Programs and Addendum, SSA–4513; Time Report of Personnel Services for Disability Determination Services, SSA–4514; and State Agency Schedule of Equipment Purchased for SSA Disability Programs, SSA–871—0960–0421.* SSA uses the information collected by forms SSA–

4513 and SSA–4514 to conduct a detailed analysis and evaluation of the costs incurred by the State Disability Determination Services (DDSs) in making the disability determination for SSA. The data is also used to determine funding levels for each DDS. SSA uses the information collected by form SSA–871 to budget and account for expenditures of funds for equipment purchases by the State DDSs that administer the disability determination program. The respondents are DDSs that have the responsibility for making disability determinations for SSA.

*Type of Information Collection:* Extension of an OMB-approved information collection.

| | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|
| SSA–4513 | 52 | 4 | 90 | 312 |
| SSA–4514 | 52 | 4 | 90 | 312 |
| SSA–871 | 52 | 4 | 30 | 104 |
| Total Estimated Annual Burden | | | | 728 |

10. *Summary of Evidence—20 CFR 416.1407—0960–0430.* Form SSA–887 is used by the State Disability Determination Services (DDS) to provide claimants with a list of medical/vocational reports pertaining to their disability. The form will aid claimants in reviewing the evidence in their folders and will also be used by hearing officers in preparing for and conducting hearings. The respondents are State DDSs that make disability determinations.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 49,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 12,250 hours.

11. *Wage Reports and Pension Information—20 CFR 422.122(b)—0960–0547.* The information collected by form OR–418P is used by SSA to identify the requester of pension plan information and to confirm that the individual is entitled to the data SSA provides. The respondents are requesters of pension plan information.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 600.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 300 hours.

Dated: May 6, 2004.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 04–10713 Filed 5–11–04; 8:45 am]

BILLING CODE 4191–02–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice With Respect to List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice with respect to a list of countries denying fair market opportunities for products and suppliers of the United States in airport construction procurements.

**SUMMARY:** Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative ("USTR") has determined not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

**DATES:** Effective May 1, 2004.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Mélida Hodgson, Associate General Counsel, (202) 395–3582 or Jean Grier, Senior International Procurement Negotiator, (202) 395–5097.

**SUPPLEMENTARY INFORMATION:** Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100–223 (codified at 49 U.S.C. 50104) ("the Act"), requires USTR to decide by May 1, 2004, whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register**. For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

**Robert B. Zoellick,**

*United States Trade Representative.*

[FR Doc. 04–10730 Filed 5–11–04; 8:45 am]

BILLING CODE 3190–W4–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 159: Global Positioning System (GPS)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 159 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

**DATES:** The meeting will be held May 17–21, 2004, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Stret, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. **Note:** Specific working group sessions will be held May 17–20. The plenary agenda will include:

- **May 21**
- Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
- Review Working Group Progress and Identify Issues for Resolution
  - Global Positioning System (GPS)/ 3rd Civil Frequency (WG–1)
  - GPS/Wide Area Augmentation System (WAAS)(WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
- Review of EUROCAE activities
- Closing Plenary Session (Assignment/ Review of Future Work, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 26, 2004.

**Natalie Ogletree,**

*General Engineer.*

[FR Doc. 04–9924 Filed 5–11–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form W–4

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–4, Employee's Withholding Allowance Certificate.

**DATES:** Written comments should be received on or before July 12, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

**SUPPLEMENTARY INFORMATION:**

*Title:* Employee's Withholding Allowance Certificate.

*OMB Number:* 1545–0010.

*Form Number:* Form W–4.

*Abstract:* Employee's file Form W–4 to tell employers their martial status, the number of withholding allowances claimed, the dollar amount they want withholding increased each pay period, and if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Pubic:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 54,209,079.

*Estimated Time Per Respondent:* 2 hours, 8 minutes.

*Estimated Total Annual Burden Hours:* 116,007,430.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–10790 Filed 5–11–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 98–32

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–32, Electronic Federal Tax Payments System (EFTPS) Programs for Reporting Agents.

**DATES:** Written comments should be received on or before July 12, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Federal Tax Payment System (EFTPS) Programs for Reporting Agents.

*OMB Number:* 1545–1601.

*Revenue Procedure Number:* Revenue Procedure 98–32.

*Abstract:* This revenue procedure provides information about the Electronic Federal Tax Payment System (EFTPS) programs for Batch Filers and Bulk Filers (Filers). EFTPS is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). The Batch Filer and Bulk Filer programs are used by Filers for electronically submitting enrollments, FTDs, and FTPs on behalf of multiple taxpayers.

*Current Actions:* There are no changes being made to this revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,500.

*Estimated Time Per Respondent:* 82 hours, 23 minutes.

*Estimated Total Annual Burden Hours:* 123,567.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–10791 Filed 5–11–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–209274–85]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–209274–85 (T.D. 8033), Tax Exempt Entity Leasing (§ 1.168).

**DATES:** Written comments should be received on or before July 12, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

**SUPPLEMENTARY INFORMATION:**

*Title:* Tax-Exempt Entity Leasing.

*OMB Number:* 1545–0923.

*Regulation Project Number:* REG–209274–85.

*Abstract:* These regulations provide guidance to persons executing lease agreements involving tax-exempt entities under section 168(h) of the Internal Revenue Code. The regulations are necessary to implement Congressionally enacted legislation and elections for certain previously tax-exempt organizations and certain tax-exempt controlled entities.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Not-for-profit institutions and state, local or tribal governments.

*Estimated Number of Respondents:* 4,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–10792 Filed 5–11–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 4835

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4835, Farm Rental Income and Expenses.

**DATES:** Written comments should be received on or before July 12, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov)*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Farm Rental Income and Expenses.

*OMB Number:* 1545–0187.

*Form Number:* Form 4835.

*Abstract:* Form 4835 is used by landowners (or sub-lessors) to report farm income based on crops or livestock produced by a tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. The information on the form is used by the IRS to determine whether the proper amount of farm rental income received by the taxpayer has been reported.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and farms.

*Estimated Number of Respondents:* 407,719.

*Estimated Time Per Respondent:* 4 hours., 24 minutes.

*Estimated Total Annual Burden Hours:* 1,793,964.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2004.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–10793 Filed 5–11–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, June 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Tuesday, June 1, 2004 from 9:00 a.m. Pacific Time to 10:00 a.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: May 7, 2004.

**Tersheia Carter,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–10794 Filed 5–11–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessoning the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

**DATES:** The meeting will be held Thursday, June 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mary O'Brien at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be held Thursday, June 3, 2004 from 3 p.m. EDT to 4 p.m. EDT via

a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

May 7, 2004.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–10795 Filed 5–11–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted in Portsmouth, New Hampshire. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Monday, June 7 and Tuesday, June 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

**SUPPLEMENTARY INFORMATION:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Monday, June 7, 2004 from 9 a.m. EDT to 5 p.m. EDT and Tuesday, June 8, 2004 from 8 a.m. EDT to 12 p.m. EDT in Portsmouth, New Hampshire at the Courtyard Marriott Hotel located at 1000 Market Street, Building Three, Portsmouth, NH 03801. Individual comments are welcomed and will be limited to 5 minutes per person. If you would like to have the TAP consider a written statement write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or, you may post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: May 6, 2004.

**Tersheia Carter,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–10796 Filed 5–11–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Privacy Act of 1974, as Amended; System of Records

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of Proposed New Privacy Act System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of a proposed new system of records entitled "Treasury/IRS 24.031—Medicare Prescription Drug Transitional Assistance Records."

**DATES:** Comments must be received no later than June 11, 2004. This new system of records will be effective June 6, 2004 unless the IRS receives comments which could result in a contrary determination.

**ADDRESSES:** Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection and copying upon request in the Freedom of Information Reading Room (1621), at the above address.

**FOR FURTHER INFORMATION CONTACT:** David Silverman, Senior Tax Law Specialist, Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, phone 202–622–6200 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** This is to give notice of a proposed new system of records, the Medicare Prescription Drug Transitional Assistance Records, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The proposed system of records will contain information used to implement provisions of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (Pub. L. 108–173). Section 105(e)(1) of that Act adds new section 6103(l)(19) to the Internal Revenue Code, to authorize disclosure of certain return information to the Department of Health and Human Services for purposes of assisting that agency to provide a low income transitional assistance subsidy under the Medicare Discount Drug Card program. The Act provides that the Secretary of the Treasury, upon written request from the Secretary of Health and Human Services pursuant to carrying out section 1860D–31 of the Social Security Act, shall disclose to officers, employees, and contractors of the Department of Health and Human Services with respect to a taxpayer for the applicable year:

1.(a) Whether the adjusted gross income, as modified in accordance with specifications of the Secretary of Health and Human Services for purposes of carrying out such section, of such taxpayer and, if applicable, such taxpayer's spouse, for the applicable year, exceeds the amounts specified by the Secretary of Health and Human Services in order to apply the 100 and 135 percent of the poverty lines under such section;

(b) Whether the return was a joint return, and (c) the applicable year, or

2. If applicable, the fact that there is no return filed for such taxpayer for the applicable year.

The system will allow the IRS to respond quickly to requests from the Secretary of Health and Human Services to disclose return information that will assist HHS to ensure compliance with eligibility requirements for the low income transitional assistance subsidy.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

The proposed new system of records, entitled "Treasury/IRS 24.031—Medicare Prescription Drug Transitional Assistance Records," is published in its entirety below.

Dated: May 7, 2004.

**Jesus H. Delgado-Jenkins,**

*Acting Assistant Secretary for Management.*

**Treasury/IRS 24.031**

**SYSTEM NAME:**

Medicare Prescription Drug Transitional Assistance Records.

**SYSTEM LOCATION:**

Martinsburg Computing Center, *See* Appendix A for location.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by Medicare who are eligible to apply for the prescription drug transitional assistance subsidy under the Medicare Prescription Drug Improvement and Modernization Act of 2003.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information on individuals who are Medicare beneficiaries and are eligible to apply for the prescription drug transitional assistance subsidy under the Medicare Prescription Drug Improvement and Modernization Act of 2003.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

26 U.S.C. 6103(l)(19), 7801, and 7803.

**PURPOSE:**

This system will maintain records for disclosure to HHS under the Medicare Prescription Drug Improvement and Modernization Act of 2003 to assist HHS in ensuring that applicants for prescription drug transitional assistance under section 1860D–31 of the Social Security Act meet the eligibility requirements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Returns and return information may be disclosed only as provided by 26 U.S.C. 6103.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper, electronic, and machine-readable media.

**RETRIEVABILITY:**

By name or social security number of the Medicare beneficiary.

**SAFEGUARDS:**

Access controls will not be less than those provided for by *IRM 25.10.1, Information Technology Security Policy and Guidance.*

**RETENTION AND DISPOSAL:**

Record retention will be established in accordance with the National Archives and Records Administration Regulations, Part 1228, Subpart B—Scheduling Records.

**SYSTEM MANAGER AND ADDRESS:**

Director, Martinsburg Computing Center. *See* Appendix A for address.

**NOTIFICATION PROCEDURE:**

Individuals may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the system manager listed above.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to any record contained in this system of records or seeking to contest its contents, may inquire in accordance with instructions appearing at 31 CFR Part 1, Subpart C, Appendix B. Inquiries should be addressed to the system manager listed above.

**CONTESTING RECORD PROCEDURES:**

*See* "Record access procedures" above.

**RECORD SOURCE CATEGORIES:**

Tax information will be obtained from the Individual Masterfile (IMF), which contains information provided by taxpayers and third parties. Medicare beneficiary information and transitional assistance applicant information will be obtained from the Centers for Medicare and Medicaid Services of the Department of Health and Human Services.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04–10851 Filed 5–10–04; 12:11 pm]
BILLING CODE 4830–01–P

# Corrections

Federal Register
Vol. 69, No. 92
Wednesday, May 12, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Addition and Deletions

*Correction*

In notice document 04–9840 beginning on page 23724 in the issue of Friday, April 30, 2004, make the following correction:

On page 23724, in the second column, in the seventh line from the bottom, remove the duplicated text beginning with the "*Service:*" heading through the third column, ending before the "*Products:*" heading.

[FR Doc. C4–9840 Filed 5–11–04; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–263–AD; Amendment 39–13605; AD 2004–09–16]**

**RIN 2120–AA64**

### Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

*Correction*

In rule document 04–10022 beginning on page 24953, in the issue of Wednesday, May 5, 2004 make the following correction:

**§ 39.13 [Corrected]**

On page 24954, in the first column, in §39.13, after amendatory instruction 2., in the third and fourth lines, "Docket 200–NM–263–AD" should read "Docket 2003–NM–263–AD".

[FR Doc. C4–10022 Filed 5–11–04; 8:45 am]

BILLING CODE 1505–01–D


Federal Register

Wednesday,
May 12, 2004

Part II

# Department of Housing and Urban Development

**Notice of Funding Availability for Housing Counseling Training; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4873–N–01]**

## Notice of Funding Availability for Housing Counseling Training

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of funding availability.

### Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

B. *Funding Opportunity Title:* Housing Counseling Training.

C. *Announcement Type:* Initial Announcement.

D. *Funding Opportunity Number:* FR–4873–N–01; OMB Approval Number: 2502–0261.

E. *Catalog of Federal Domestic Assistance (CFDA) Number:* Housing Counseling Program 14.169.

F. *Dates:* The application is due on June 14, 2004.

### Full Text of Announcement

### I. Funding Opportunity Description

*Program Purpose.* Funds are available to provide, under cooperative agreements with HUD, a broad array of activities designed to improve and standardize the quality of counseling provided by housing counselors working for HUD-approved housing counseling agencies.

### II. Award Information

A. *Available Funds:* This NOFA announces the availability of approximately $7.75 million, which includes up to $3,750,000 in Fiscal Year (FY) 2004 funds, $3,802,048 from FY03, and such additional carryover funds that may become available.

B. *Match:* No specific ratio is required.

C. *Anticipated Awards:* HUD's goal is to fund an organization, or a consortium of organizations, to deliver the full spectrum of activities eligible for funding under this NOFA. Should this not be possible, HUD reserves the right to make multiple awards under this NOFA.

D. *Award Instrument:* HUD expects to use a cooperative agreement, but reserves the right to use the award instrument it determines to be most appropriate. All awards will be made on a cost reimbursement basis in accordance with, and subject to, the requirements in OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments; or OMB Circular A–122, Cost Principles for Non-Profit Organizations, as applicable to your organization. These awards are also subject to the administrative requirements established in OMB Circular A–102, implemented at 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments); OMB Circular A–110, implemented at 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations); and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations), implemented at 24 CFR parts 84 and 85. If you receive an award, you must comply with and are required to ensure that any subrecipients also comply with the above requirements. OMB circulars can be found at *http://www.whitehouse.gov/omb/circulars/index.html.*

Awards made as cooperative agreements will entail significant HUD involvement including but not limited to the following items:

- Review and approval of proposed courses, including course materials;
- Review and approval of evaluation instruments and methodology for determining value of courses and impacts; and
- Review and approval of the geographic coverage of the training, as well as the type of training and number of courses to be provided.

1. *Award Adjustments.* HUD reserves the right to adjust funding levels for each applicant. Once applicants are selected for award, HUD will determine the total amount to be awarded to any grantee, based upon the scope and geographic coverage of services to be provided and funds available.

2. *Award Period.* Cooperative agreements will be for a period of up to thirty-six (36) months.

Applicants selected for award must receive prior HUD approval to incur costs prior to the date of the grant agreement. HUD will not approve pre-award costs incurred more than ninety (90) calendar days prior to the effective date of the grant agreement. All pre-award costs are incurred at the applicant's risk and HUD has no obligation to reimburse such costs.

### III. Eligibility Information

*A. Eligible Applicants*

1. *Eligible Applicants.* Applicants must be public or private nonprofit organizations with at least two years of experience providing the specific services they are proposing to provide under this NOFA.

A consortium of organizations may apply for funding under this NOFA, but one organization must be designated as the primary applicant. Furthermore, applicants may utilize in-house staff, sub-grant recipients or consultants, and networks of local organizations with requisite experience and capacity.

*B. Cost Sharing or Matching*

No specific ratio is required.

*C. Other*

1. *Eligible Activities.* Applicants must propose to develop and implement a comprehensive and ongoing training program for housing counselors, which may be conducted on-site, through satellite broadcast, or through computer training software, on the full range of housing counseling services and practices. Consistent with Rating Factor 5 (Achieving Results and Program Evaluation), applicants must also identify program outputs and outcomes that will allow the selected grantee or grantees and HUD to measure actual achievements against anticipated achievements. Outputs and outcomes must be objectively quantifiable. Applicants must identify not only how many counselors they expect to train over the course of the grant, but how they will measure and validate the effectiveness of the training, for example, by developing and administering tests (pre-tests and post-tests), or other means to measure a counselor's competence in each area of training, both before and after training. The success of the grantee's performance would be measured, in large part, by the percentage of counselors who achieve a satisfactory test score or otherwise demonstrate a satisfactory level of competence in the area of training. A counselor may be permitted several opportunities within a certain period after receiving the training to demonstrate a satisfactory level of competence in an area of training (for example, through on-line testing). Applicants must also describe their proposed fee structure for the training to be offered, including providing for the maximum number of training scholarships. Scholarship eligibility may be based, in whole or in part, upon the attainment of a satisfactory level of competence. To be considered eligible for funding, an application must address a minimum of five of the training topics listed below. When at least five of the listed topics are addressed, applicants may propose

additional topics. Training topics include the following:

a. *General Housing Counseling.* Teach counselors the principles and applications of housing counseling from the industry's and the counselor's point of view. Review the skills and tools needed to be an effective housing counselor. Provide overviews of the national picture, pre- and post-purchase counseling for homeowners, delinquency, and default counseling.

b. *Credit Counseling for Prospective Homeowners.* Train counselors in conducting results-oriented individual counseling sessions for prospective homebuyers, including triaging customers, developing corrective action plans and timelines for success, and facilitating progress as customers overcome obstacles and move toward mortgage-readiness. Train counselors regarding state-of-the-art software designed specifically for credit rebuilding, debt reduction, automated budgeting, and downpayment savings accumulation. Use sample customer cases to identify obstacles and simulate counseling sessions.

c. *Matching Clients with Loan Products.* Train counselors in industry practices, analysis of financials, risk elements, and general concepts affecting conventional and government mortgage loan decisions. Provide counselors with effective procedures and techniques that will translate into appropriate loans and satisfied housing counseling clients. Review case studies to illustrate the functional areas of the underwriting process, from the application to the loan sale.

d. *Homebuyer Education Programs.* Teach counselors how to deliver a comprehensive homebuyer education program to turn prospective homebuyers into satisfied homeowners. Teach counselors to use the best materials and methods to train homebuyers how to shop for a home, get a mortgage loan, improve their budget and credit profiles, and maintain their home and finances after purchase.

e. *Section 8 Homeownership.* Train counselors in how to effectively approach and partner with Public Housing Authorities (PHAs) in the implementation of a Section 8 Homeownership Program. Review the unique characteristics of the program and the voucher holders as they relate to the counseling component. Share effective and proven implementation strategies.

f. *Helping Homeowners Avoid Delinquency and Predatory Lending.* Teach counselors to conduct educational seminars and advise clients regarding how to avoid predatory lenders and common lending pitfalls. Give counselors the knowledge and tools to help unwary borrowers avoid inflated appraisals, unreasonably high interest rates, unaffordable repayment terms, and other conditions that can result in a loss of equity, increased debt, default, and foreclosure. Train counselors to help clients manage debt, avoid predatory lenders, and avoid mortgage default. Teach counselors how to read the warning signs of debt problems and how to recognize predatory lenders, as well as identify available resources to help keep homeowners out of financial trouble. Review state and federal regulations, including RESPA and the Truth in Lending Act.

g. *Foreclosure Prevention.* Train counselors on the protocol for counseling homeowners in financial distress. Address all aspects of default and delinquency, including reasons for default, ways to maximize income and reduce expenses, calculating delinquencies, understanding the players in the mortgage marketplace, loss-mitigation options for FHA-insured and other loans, information about foreclosure laws and timelines, tips on effectively intervening with lenders and servicers, managing multiple mortgages or liens, and the pros and cons of refinancing.

h. *Home Equity Conversion Mortgages (HECM).* Train counselors about reverse mortgages for older homeowners. Teach them to understand products and programs, analyze plans and compare their costs and benefits, and identify alternatives. Also, review relevant counseling skills and ethics.

i. *Home Maintenance and Financial Management for New Homeowners.* Train counselors in how to advise individuals and conduct workshops aimed at ensuring the long-term success of new homebuyers, including home maintenance and repair, financial management, insurance, and record keeping.

j. *Web-based Client Management Systems.* Train counselors in how to effectively utilize web-based housing counseling client management systems.

k. *Counseling Individuals and Families Who are Homeless or at Risk of Becoming Homeless.* Train counselors about the various social services available to which they should be referring homeless and potentially homeless families and individuals. Provide information on federal, state, and local homeless programs and how clients can access these programs. Share strategies on how to partner with local public service providers to ensure that clients receive attention and assistance quickly and efficiently. Review the unique characteristics of the homeless population to help counselors understand the types of financial, physical, and social problems facing the families and individuals who seek their assistance.

2. *Threshold Requirements.* Applications will be declared ineligible for any of the following reasons:

a. DUNS Number. HUD will not rate and rank applications that do not include a valid Data Universal Numbering System (DUNS) number administered by Dun & Bradstreet.

b. Compliance with Fair Housing and Civil Rights Laws. An applicant, or any of the organizations that partner with an applicant for the provision of services in conjunction with this NOFA, must meet the following Civil Rights Threshold Requirements:

(1) With the exception of federally-recognized Indian tribes and their instrumentalities, all applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a), as applicable. A federally-recognized Indian tribe must comply with the non-discrimination provisions enumerated at 24 CFR 1000.12, as applicable.

(2) If an applicant has been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination, is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination, or has received a letter of findings identifying ongoing or systemic noncompliance under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or Section 109 of the Housing and Community Development Act, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in this NOFA, the applicant may not apply for assistance under this NOFA. HUD will not rate and rank an application. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include but are not limited to:

(a) Voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) HUD-approved conciliation agreement signed by all parties;

(c) Consent order or consent decree; or

(d) Judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegation of discrimination.

c. HUD will not make an award if the applicant or the applicant's organization has been presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions from any federal department or agency.

d. Delinquent Federal Debt. Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of federal funds will be made to an applicant that has an outstanding delinquent federal debt unless: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received; or (3) other arrangements satisfactory to HUD are made prior to the deadline submission date.

e. False Statements. A false statement in an application is grounds for denial or termination of an award and grounds for possible punishment as provided in 18 U.S.C. 1001.

f. Additional requirements: Agencies selected as grantees or sub-grantees must also comply with the following requirements:

(1) Salary Limitation for Consultants. Funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant at more than the daily equivalent rate paid for Level IV of the Executive Schedule, unless specifically authorized by law.

(2) Accessibility. All grant recipients and subrecipients must make training facilities and services reasonably accessible to persons with a wide range of disabilities or provide other means of accommodation for the disability. In addition, counseling training must train counselors in the accessibility requirements applicable to eligible counseling activities and accessibility requirements under the Fair Housing Act, including requirements for reasonable modification.

(3) Reports. All grant recipients will be required to report to HUD on a quarterly basis, unless otherwise specified in the cooperative agreement.

(4) Code of Conduct. Entities that are subject to 24 CFR parts 84 and 85 (including most nonprofit organizations and state, local, and tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (See Sections 84.42 and 85.36(b)(3)). The code of conduct must prohibit real and apparent conflicts of interest that may arise among employees, officers, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. Self-recusal will not eliminate a potential or apparent conflict of interest. Prior to entering into a grant agreement with HUD, the applicant will be required to submit a copy of its code of conduct and describe the methods it will use to ensure that all officers, employees, and agents of the organization are aware of the code of conduct.

(5) Financial Management Systems. Applicants selected for funding must provide documentation demonstrating that the applicant's financial management systems satisfy the requirements in the applicable regulations at 24 CFR 84.21(b) and 85.20. Consistent with the requirements of the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–07), if the applicant expended $300,000 or more in federal awards in its most recent fiscal year, such documentation must include a certification from or most recent audit by the applicant's independent public accountant that the applicant maintains internal controls over federal awards, complies with applicable laws, regulations, and contract or grant provisions, and prepares appropriate financial statements. The applicant will have at least 30 calendar days to respond to this requirement. If an applicant does not respond within the prescribed time or responds with insufficient documentation, then HUD may determine that the applicant has not met this requirement and may withdraw the grant offer.

(6) Indirect Cost Rate. Applicants must also submit documentation establishing the organization's indirect cost rate. Such documentation may consist of a certification from the most recent audit or indirect cost rate agreement by the cognizant federal agency or an independent public accountant. If the organization does not have an established indirect cost rate, the organization will be required to develop and submit an indirect cost proposal to HUD or the cognizant federal agency as applicable, for determination of an indirect cost rate that will govern an award. Applicants that do not have a previously established indirect cost rate with a federal agency shall submit an initial indirect cost rate proposal immediately after the applicant is advised that it will be offered a grant or, in any event, not later than three months after the effective date of the grant. OMB Circular A–122 sets forth the requirements to determine allowable direct and indirect costs and the preparation of indirect cost proposals. The circular can be found at *http://www.whitehouse.gov/omb.*

(7) Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity or if any key individuals have been convicted or are presently facing criminal charges. If the name check reveals significant adverse information that reflects on the business integrity or responsibility of the recipient or any key individual, HUD reserves the right to: (a) Deny funding or consider suspension/termination of an award immediately for cause; (b) require the removal of any key individual from association with management or implementation of the award; and (c) make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

(8) Pre-Award Accounting System Survey. HUD may arrange for a pre-award accounting system survey of the applicant's financial management system in cases where the recommended applicant has no prior federal support, HUD program officials have reason to question whether the applicant's financial management system meets federal financial management standards, or the applicant is considered a high risk based upon past performance or financial management findings. HUD will not make an award to any applicant that does not have a financial management system that meets federal standards.

(9) Participation in HUD-Sponsored Program Evaluation. As a condition of the receipt of financial assistance under this NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

(10) Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses. HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD financial assistance. State, local and tribal governments are required by

24 CFR 85.36(e) and non-profit recipients of assistance, including subrecipients, are required by 24 CFR 84.44(b) to take all necessary affirmative steps in contracting for the purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms are used whenever possible or as established by HUD in the award agreement.

(11) Executive Order 13166, Improving Access to Persons With Limited English Proficiency (LEP). Executive Order 13166 seeks to improve access to persons with limited English proficiency by providing materials and information in languages other than English. Applicants obtaining an award from HUD must seek to improve access to program benefits and information for persons with limited English proficiency.

(12) Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations. HUD is committed to full implementation of Executive Order 13279 in the operation of its programs.

(13) The Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*), the Age Discrimination Act of 1974 (42 U.S.C. 6101 *et seq.*), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

(14) Affirmatively Furthering Fair Housing. Under Section 808(e)(5) of the Fair Housing Act, HUD is obliged to affirmatively further fair housing. HUD requires the same of its funding recipients. Successful applicants will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability, and familial status. An application must include specific steps to:

(a) Overcome the effects of impediments to fair housing choice that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice.

Further, the applicant has a duty to carry out the specific activities provided in the responses to the individual rating factors that address affirmatively furthering fair housing. These requirements apply to all HUD programs announced via a NOFA.

## IV. Application and Submission Information

### *A. Address To Request Application Package*

Electronic Submission. Applications must be submitted through Grants.gov at *http://www.grants.gov*. Prepare all of the required files in accordance with the instructions in this announcement prior to starting the transmission process. If you encounter problems contact the Grants.gov Customer Support Center at 800–519–4726 or at *support@grants.gov*. The customer support center is open from 7 a.m. to 9 p.m. eastern time. Only applications submitted through Grants.gov will be considered for award.

1. Electronic Signature. Applications submitted through Grants.gov constitute submission as electronically signed applications.

2. Grants.gov Registration. It is recommended that applicants begin completing the six "Get Started" steps no later than thirty days prior to the application due date. The "Get Started" section of the site, found at *http://www.grants.gov/GetStarted,* provides all information needed to understand and execute the process. Information required to "Get Started" may also be found in Section IV.F. of this NOFA.

3. Copies of the application package and related instructions for this NOFA may be downloaded from the grants.gov Web site: *http://www.grants.gov/FindGrantOpportunities.* To find this opportunity, applicants must enter either the funding opportunity number, FR 4873–N–01, or the CFDA Number, 14.169.

### *B. Content and Form of Application Submission*

1. Application Submission. Applications for this NOFA *must* be submitted electronically through the Grants.gov web portal. Once the application package is downloaded and completed, the "submit" button will be activated to allow the application to be submitted electronically through the Grants.gov portal. The applicant will be notified by e-mail that the application was successfully submitted through the portal.

2. Proof of Timely Submission. The Grants.gov portal will time and date stamp all applications when they are successfully transmitted to Grants.gov. The Grants.gov time and date stamp will constitute proof of timely submission of an application. The applicant will receive an e-mail notification of the time and date stamp and the Grants.gov tracking number. Applicants may not submit portions of an application through the Grants.gov portal; however, a complete, revised application may be submitted prior to the deadline date. In the event that two or more applications are received from the same applicant with the same project title, the application with the latest transmission time stamp prior to the closing due date and time will be considered for review.

3. Use the checklist below to organize the application. Unless indicated below, all applicants must submit the following:

a. DUNS number. Block 5 on Form SF–424 should be used to enter the DUNS number. See Section IV.F.1. for more information about DUNS numbers.

b. Forms. The standard forms, certifications, and assurances are listed in Appendix A of this NOFA (collectively, referred to as the "standard forms"). All of the standard forms required for this NOFA are available on the Grant.gov Web site. (Please note that forms may vary slightly in appearance on the Grants.gov Web site.) Additional information may be attached to the Project Narrative Attachment form and the Other Attachments form.

c. Nonprofit Status. Each applicant is required to submit, for itself and for any organization with which it is partnering for the purpose of this NOFA, a legible copy of the document that supports the applicant's claim to be a nonprofit organization (for example, a 501(c) letter issued by the IRS). The documentation must contain the official name, address, and telephone number of the legal authority that granted the nonprofit status. Branches or affiliates of the applicant that are part of the proposed work plan must also be nonprofit entities. These documents should be scanned and submitted electronically to HUD and attached to the Other Attachments form, which is part of the Grants.gov package. Applicants with problems scanning documents should call the contact named under agency contacts for advice and guidance related to submission of these documents to meet the established deadline date and time requirements.

d. Narrative Statements. Provide narrative statements addressing the Rating Factors in section V below. Responses to the rating factors should provide HUD with detailed quantitative and qualitative information and relevant examples regarding the housing counseling training and other work of the organization that is related to the proposed activities. These narrative statements will be the basis for evaluating the application. Applicants will submit these narrative statements in the Grants.gov application package for this NOFA under the Project

Narrative Attachment form. Please note that the Project Narrative Attachment form can contain multiple narrative attachments required to be submitted as part of your application submission for this NOFA. The Other Attachments form also allows applicants to add files, including scanned documents, as needed in accordance with the application checklist contained in this NOFA.

e. Prohibition Against Lobbying Activities. Applicants are subject to the provisions of Section 319 of Public Law 101–121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that applicants have not and will not use appropriated funds for any prohibited lobbying activity. In addition, applicants must disclose, using Standard Form LLL, Disclosure of Lobbying Activities, any funds other than federally appropriated funds that have been or will be used to influence federal employees, members of Congress, or congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of a tribe's sovereign power are excluded from coverage of the Byrd Amendment, but Indian tribes and TDHEs established under only state law must comply with this requirement.

*C. Submission Dates and Time*

Completed applications must be submitted on or before 8 p.m. eastern time, June 14, 2004.

*D. Intergovernmental Review*

Executive Order 12372, Intergovernmental Review of Federal Programs. Executive Order 13272 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct federal development. HUD implementing regulations are published in 24 CFR part 52. The order allows each state to designate an entity to perform a state review function. The official listing of State Points of Contact (SPOCs) for this review process can be found at *http://www.whitehouse.gov/omb/grants/spoc.html*. States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If a state has a SPOC, an applicant from that state should contact the SPOC to see if the SPOC is interested in reviewing the application prior to submission to HUD.

*E. Funding Restrictions*

Ineligible Applicants. HUD will not consider an application from an ineligible applicant: See Section III.A. for information on applicants eligible for funding.

*F. Other Submission Requirements*

1. *DUNS Number, Registration with Central Contractor Registry (CCR) and Registration with a Credential Provider.* For requirements of who has to submit a DUNS number, please see the interim rule published on March 26, 2004 (69 FR 15671). Additional information about HUD's DUNS requirement is available from HUD's grants Web site: *http://www.hud.gov/grants/index.cfm*. All applicants for federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying on or after October 1, 2003. Beginning October 31, 2003, applicants applying online for funding assistance also need to register with the Federal Central Contractor Registry and register with a Credential Provider. The Grants.gov Web site has online instructions for all registration requirements. Applicants are urged to read the information available on the Grants.gov Web site, at *http://grants.gov/GetStarted. Please allow up to two weeks to complete this registration process.*

**V. Application Review Information**

*A. Criteria*

Applications will be evaluated competitively according to the Factors for Award described below, and ranked against all other applicants. All applications will be scored and ranked in HUD Headquarters.

1. Factors for Award Used To Rate and Rank Applications

a. The factors for award, and maximum points for each factor, are outlined below. These factors will be used to evaluate applications. The maximum score is 100 for all applicants.

b. HUD may rely on other information, such as performance reports, financial status information, monitoring reports, audit reports and other information available to HUD in making score determinations under any Rating Factor.

c. All responses to the factors for award, submitted as narrative statements should be submitted under the Project Narrative Attachment form found on the Grants.gov Web site for this funding opportunity. Applicants should clearly label each narrative with the Factor Title and number related to the response.

d. Where a factor for award requests submission of a standard form, the standard form can be found in the Grants.gov electronic application package.

2. Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (30 Points)

HUD uses responses to this rating factor to evaluate the readiness and ability of an applicant to begin the proposed work program immediately, as well as the potential for an applicant to cost-effectively and successfully implement the proposed activities indicated under Rating Factor 3.

a. *Relevant Staff (10 points).* In rating this section, HUD will consider the degree to which the applicant and, if applicable, partnering organizations, have sufficient personnel with the relevant knowledge and experience to implement the proposed activities in a timely and effective fashion. Specifically, scoring will be based on the number of years of relevant and recent housing counseling training, housing counseling material production, and other related experience of program managers and staff.

Submit the names and titles of employees, including subcontractors and consultants, who would perform the activities proposed in Rating Factor 3. Clerical staff should not be listed. Describe each employee's, subcontractor's, or consultant's relevant professional background and experience. Experience is relevant if it corresponds directly to projects of a similar scale and purpose. Provide the number of years of experience for each position listed, and indicate when each position was held. Individual descriptions should be limited to one page. List recent and relevant training received.

b. *Experience (15 points).* Applicants should carefully document recent experience, and the experience of organizations with which it is partnering, in providing the eligible activities listed in Section III of this NOFA that it is proposing to offer through this NOFA. Indicate the types and complexity of the services provided and the outcomes for counselors as a result of the training and other services. Describe the level of effort and time

required to provide the services and to meet the needs of the counselors.

Indicate the number of counselors that have participated in your training program or otherwise benefited from the relevant services you provided.

c. *Performance/Grant Requirements (5 points).* In scoring this section, HUD will evaluate how well the applicant has satisfied the requirements, including reporting, on HUD grants received. If an applicant has not received a HUD grant, the applicant should base its response on activities and requirements under other sources of funding, such as other federal, state, or local grant awards.

An applicant should characterize performance with regard to the timeliness and completeness with which the applicant satisfied reporting requirements (such as Form HUD 9902.)

Also, indicate whether or not an applicant fully expended grant awards during the specified grant periods. If not fully expended, provide an explanation as to the reason why the funds were not fully expended on time and the steps taken to ensure that future funding will be expended in a timely manner.

3. Rating Factor 2: Need/Extent of the Problem (5 Points)

This factor addresses the extent to which there is a need to fund proposed activities described in response to Rating Factor 3.

Describe and document the national need, such as the number of housing counselors and areas of housing counseling training, the application intends to address with the services proposed in Rating Factor 3. Responses will be evaluated based on how well they demonstrate a grasp of the elements of the problems this NOFA is intended to address. Include applicable statistics and analyses, if available, contained in data sources that are sound and reliable.

4. Rating Factor 3: Soundness of Approach/Scope of Housing Counseling Services (35 Points)

This factor addresses the quality and effectiveness of the proposed work plan. In rating this factor, HUD will evaluate the extent to which the applicant presents a detailed and sound approach for providing the proposed services. HUD will also evaluate the extent to which the applicant demonstrates the cost-effectiveness of its activities, and convincingly explains how the proposed activities will yield long-term results.

a. *Work Plan (20 points).* Applicants should provide a work plan that lists the major objectives and activities it intends to undertake, and how it plans to provide those services. Include administrative and project tasks.

Applicants should indicate which of the eligible activities it proposes to provide or whether certain services will be provided by organizations with which an applicant has partnered. An applicant must propose to provide at least five of the eligible services listed in Section III. However, an ideal applicant eligible to receive the maximum number of points will provide, either directly or through partnerships, the full spectrum of eligible activities, and the proposed program will be national in scope. Explain how proposed activities are linked.

An applicant should indicate whether its proposed training program is national in scope. If it is regional in scope, an applicant should indicate the geographic area it proposes to cover. Applicants must propose to provide training covering at least five housing counseling topics listed in Section III, although a comprehensive curriculum is preferred and is eligible to receive the maximum number of points. If an applicant is proposing to provide training for a limited number of topics, the applicant must indicate which of the housing counseling topics listed in Section III of this NOFA, as well as any additional topics, it is proposing to provide.

All proposals to provide training must include a description of the methodology for measuring the success of the training program. All proposals must also include a scholarship element, detailing the full or partial costs to be covered, including travel, hotel, and tuition expenses. Indicate the number of the scholarships you estimate can be offered, and describe plans for determining who will and, if applicable, will not receive scholarships. Demonstrating a satisfactory level of competence in an area of training may be a basis, in whole or in part, for determining scholarship eligibility.

b. *Proposed Budget (10 points).* For the work plan proposed above, indicate the HUD grant size you are proposing, and submit a proposed budget based on this figure, utilizing form SF–424–A. If applicable, the budget should highlight portions being proposed as sub-grants to partnering organizations. As the grant period is three years, submit a single budget that includes the total costs over the entire project period. Make a case for why the proposed budget is cost effective in achieving proposed results. Responses will be evaluated based on the quality, thoroughness, and reasonableness of the cost estimates provided.

c. *Rationale for Proposed Activities and Methods (5 points).* Provide a rationale for how the proposed activities and methods most effectively address the national need described in Rating Factor 2, and explain how your proposed activities will yield long-term results.

5. Rating Factor 4: Leveraging Resources (5 Points)

Although HUD funding through this NOFA may fully fund an organization's proposed program, applicants are encouraged to secure the use of other resources to supplement the HUD grant.

In scoring this factor, applicants will be evaluated based on their ability to obtain additional resources for their proposed training and other related eligible activities, including direct financial assistance and in-kind contributions, which may include services, equipment, office space, labor, etc. Resources may be provided by governmental entities, public or private nonprofit organizations, for-profit private organizations, or other entities committed to providing the applicant assistance.

Additionally, resources provided by the applicant, recorded as 'applicant match' and 'program income' on form SF–424, will count as leveraged resources.

Points for this factor will be awarded based on the ratio of requested HUD funds to total budget for the proposed activities.

| Percentage | Points |
|---|---|
| 1–35 | 5 |
| 36–59 | 4 |
| 60–79 | 3 |
| 80–89 | 2 |
| 90–99 | 1 |

6. Rating Factor 5: Achieving Results and Program Evaluation (25 Points)

Outcomes are benefits accruing to recipients of the service to be offered (*e.g.*, increase in the number of counselors demonstrating proficiency after training), and substantive changes to the *status quo ante* as a result of an applicant's activities (*e.g.*, production of validated instructional technologies and validation methodologies). Outputs are units of service or activity (*e.g.*, instructional units developed, number of counselors trained, number tested). Outputs and outcomes must be objectively quantifiable. The purpose of this factor is for the applicant to identify program outputs and outcomes that will allow an applicant and HUD to measure actual achievements against anticipated achievements. For this NOFA, HUD will

give particular weight to an applicant's ability to demonstrate change in counselors' knowledge and skills as a result of the training offered. Applicants should therefore emphasize a rigorous and objective testing protocol as part of their performance evaluation strategy.

*Submission Requirements for Factor 5.* Applicants must submit an effective, quantifiable, and outcome-oriented evaluation plan. The plan must be in narrative form and must also be presented utilizing the instructions document (Logic Model form HUD–96010) found in Appendix B of this NOFA for measuring performance and determining that output and outcome goals have been met. An applicant must submit a program evaluation plan that demonstrates how it will measure its own program performance. The evaluation plan should identify what an applicant is going to measure, how an applicant is going to measure it, and the steps in place to make adjustments to its work plan if performance targets are not met within established timeframes. Specifically, the plan must identify:

—*Outputs.* Outputs are the direct products of an applicant's activities that lead to the ultimate achievement of outcomes. Examples of outputs are the number of training sessions to be provided and the number of counselors to be trained. Identify interim and full grant term projected outputs and timeframes for accomplishing these goals. The plan must show how an applicant will measure actual accomplishments against anticipated achievements.

—*Work Plan Adjustments.* Describe steps in place to make adjustments to the work plan if outputs are not met within established timeframes or if a grantee begins to fall short of established outputs or timeframes.

—*Outcomes.* Outcomes are benefits accruing to the counselors as a result of participation in an applicant's program. Outcomes are performance indicators an applicant expects to achieve or goals an applicant hopes to meet over the term of its proposed grant. An example of an outcome is the percentage of counselors who, following training, can demonstrate competence in the areas of training. Another example of an outcome is an instructional module, which when administered to counselors, produces a measurable increase in counselors' knowledge or skills. An applicant should identify how it will determine that a counselor has demonstrated competence following training, and provide projected outcomes of the number of counselors trained and the number of counselors demonstrating competence following training for the full grant term, as well as timeframes for accomplishing these goals. The plan must show how an applicant will measure actual accomplishments against anticipated achievements.

—Information Collection. An applicant should describe its strategy for collecting outcome information.

*B. Review and Selection Process*

1. *General.* HUD will review each application to determine whether it meets the threshold requirements found in Section IV and the eligibility requirements found in Section III of this NOFA. Only applicants that meet all of the eligibility and threshold requirements will be rated and ranked.

2. *Rating Panels.* To review and rate applications, HUD may establish panels which may include persons not currently employed by HUD. HUD may include these non-HUD employees to obtain certain expertise and outside points of view, including views from other federal agencies.

3. *Corrections To Deficient Applications.* After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information the applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of a response to any rating factor. In order not to exclude unreasonably applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications, failure to submit an application that contains an original signature by an authorized official, and failure to submit the requested number of copies. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

4. *Rating and Ranking.* a. Applications that earn a score of 75 points or more will be considered eligible for funding.

b. HUD intends to provide funding for as full a range of the eligible activities listed in Section III of this NOFA. To achieve this objective, HUD reserves the right to make one award to the highest-ranking applicant that can satisfactorily provide, either directly or though partners, the full spectrum of eligible activities under this NOFA. Should multiple organizations apply that can satisfactorily provide the full spectrum of eligible activities, the entire amount available under this NOFA will be awarded to the highest scorer among organizations that fit this description.

c. In the event that no such comprehensive applicant materializes, HUD may make as many grants in rank order as it considers appropriate to facilitate the provision of the maximum number of eligible activities.

d. If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application. If an applicant turns down an award offer, HUD may make an offer of funding to the next highest-ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program where there is a balance of funds.

e. In the event HUD commits an error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this NOFA, HUD may select that applicant when sufficient funds become available.

5. *Award Size.* Award size for a singular activity or range of activities will depend upon the cost estimates. Proposed grant size will correspond to the number of applications selected for award and the scope of the services provided. HUD reserves the right to approach the applicant regarding an award covering only a portion of the proposed activities. All grantees will receive the lower of either the award amount determined by HUD or the amount actually requested by the applicant.

6. *Award Adjustments.* HUD reserves the right to adjust funding levels for each applicant. Once applicants are selected for award, HUD will determine the total amount to be awarded to any grantee, based upon the scope and geographic coverage of services to be provided and funds available.

7. *Adjustments to Funding.* HUD reserves the right to fund less than the

full amount requested in an application to ensure the fair distribution of funds and ensure that the purposes or requirements of this program are met.

8. *Negotiation.* After all eligible applications have been rated and ranked, and selections have been made, HUD requires that all applicants conditionally selected for funding participate in negotiations to determine the specific terms of the cooperative agreement and budget. Negotiations may result in the following adjustments:

a. Scope of Services Adjustments. HUD reserves the right to require an applicant, as a condition of funding, to provide selected services contained in its proposal. For example, HUD may provide funds for the areas in which grantees have the greatest skill and capability, but not fund the applicant for the full scope of proposed services. HUD may also require selected applicants, as a condition of funding, to provide coverage on a more limited or more extensive geographic scope than originally proposed.

b. HUD will not fund any portion of an application that: Is not eligible for funding under this program's statutory or regulatory requirements; does not meet the requirements of this NOFA; or may be duplicative of other funded programs or activities from prior year awards or other selected applicants. Only the eligible portions of an application (including non-duplicative portions) may be funded.

c. Establishment of performance standards and measures. HUD intends to measure and address the performance and compliance actions of funding recipients in accordance with the applicable standards and sanctions established for this program.

## VI. Award Administration Information

*A. Award Notices*

After all eligible applications have been rated and ranked and selections have been made, HUD will notify applicants regarding the disposition of their application.

*B. Administrative and National Policy Requirements*

1. *Environmental Requirements.* This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

2. *Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of a state, including PHAs, that are using assistance under this NOFA for procurement and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the cost of the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

3. *Accessible Technology.* The Rehabilitation Act Amendments of 1998 (the Act) applies to the electronic information technology (EIT) used by HUD for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal funds awarded. The Act's coverage includes, but is not limited to, computers (hardware, software, word-processing, email, and web pages), facsimile machines, copiers, and telephones. Consistent with the principles of the Act, HUD requires the same of its funding recipients. If you are a successful applicant, you will be required, when developing, procuring, maintaining, or using EIT to ensure that the EIT allows employees with disabilities and members of the public with disabilities to have access to and use of information and data that is comparable to the access and use of information and data by employees and members of the public who do not have disabilities. If these standards impose a hardship on a funding recipient, a recipient may provide an alternative means to allow the individual to use the information and data. However, no recipient will be required to provide information services to a person with disabilities at any location other than the location at which the information services is generally provided.

*C. Reporting*

Grant recipients will be required to submit quarterly progress reports, comparing actual accomplishments with the goals and objectives established for the period, explaining why established goals were not met, and highlighting any problems, delays, or adverse conditions that materially impaired the ability to meet the objectives of the awards.

## VII. Agency Contact

For further information about this NOFA or application requirements, applicants should contact HUD Headquarters, Program Support Division, at (202) 708–0317 (this is not a toll-free number). Persons with hearing or speech impairments may access any of these numbers via (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339. For technical help with the electronic submission procedure, applicants may email *support@grants.gov* or call (800) 518–4726 ((800) 518–GRANTS). The Grants.gov Customer Support Center is open from 7 a.m. to 9 p.m. eastern time.

## VIII. Other Information

A. *Federalism, Executive Order 13132.* This notice does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of Executive Order 13132 (entitled "Federalism").

B. *Section 102 of the HUD Reform Act, Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified at 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this NOFA as follows:

1. *Documentation.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any

letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

2. *Debriefing.* For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide a debriefing to a requesting applicant a debriefing related to its application. All debriefing requests must be made in writing or by email by the authorized official whose signature appears on the SF–424 or his or her successor in office, and submitted to the person or organization identified as the Contact under the section entitled "Agency Contact." Information provided during a debriefing will include, at a minimum, the final score the applicant received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

3. *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

4. *Publication of Recipients of HUD Funding.* HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide: a. Assistance subject to Section 102(a) of the HUD Reform Act; and

b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

C. *Section 103 of the HUD Reform Act.* HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified at 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations in providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

D. *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0261. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

E. *Authority.* HUD's Housing Counseling Program, and the training of this NOFA are authorized by Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x), and is generally governed by HUD Handbook 7610.1, REV–4, CHG–1, dated October 27, 1997.

Dated: April 22, 2004.

**Sean Cassidy,**

*General Deputy Assistant Secretary for Housing.*

BILLING CODE 4210–72–P

## Application Package Checklist

### Standard Forms

| | |
|---|---|
| SF-424 | Application for Federal Assistance |
| SF-424B | Applicant Assurances and Certifications |
| SF-424A | Budget Information - Nonconstruction Programs |
| SF-LLL | Disclosure of Lobbying Activities (if applicable) |
| SF-424 SUPP | Survey on Ensuring Equal Opportunity for Applicants |
| HUD-2880 | Applicant/Recipient Disclosure/Update Report |
| HUD-96010 | Logic Model |

Project Narrative Attachment form

Budget Narrative Attachment form (Optional)

Other Attachments form

These forms allow you to attach the narrative portions of the application and supporting documentation requested throughout the NOFA. The narrative may be submitted as a single attachment or as individual documents.

APPLICANTS, PLEASE NOTE: Required fields, which must contain an entry before the system will allow an applicant to submit an application, are shaded yellow on the electronic forms downloaded from Grants.gov. All fields with a yellow background must contain an entry. If the field does not apply to you, most fields will accept "N/A"

**APPLICATION FOR FEDERAL ASSISTANCE**

Version 7/03

| | | | |
|---|---|---|---|
| **1. TYPE OF SUBMISSION:** Application ☐ Construction ☐ Non-Construction / Pre-application ☐ Construction ☐ Non-Construction | | **2. DATE SUBMITTED** | Applicant Identifier |
| | | **3. DATE RECEIVED BY STATE** | State Application Identifier |
| | | **4. DATE RECEIVED BY FEDERAL AGENCY** | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | **Organizational Unit:** Department: |
| Organizational DUNS: | Division: |
| **Address:** Street: | **Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: First Name: |
| City: | Middle Name |
| County: | Last Name |
| State: Zip Code | Suffix: |
| Country: | Email: |
| **6. EMPLOYER IDENTIFICATION NUMBER** *(EIN):* ☐☐-☐☐☐☐☐☐☐ | Phone Number (give area code) / Fax Number (give area code) |

| | |
|---|---|
| **8. TYPE OF APPLICATION:** ☐ New ☐ Continuation ☐ Revision<br>If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐<br>Other (specify) | **7. TYPE OF APPLICANT:** (See back of form for Application Types)<br>Other (specify)<br>**9. NAME OF FEDERAL AGENCY:** |
| **10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐-☐☐☐<br>TITLE (Name of Program): | **11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:** |
| **12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):* | |
| **13. PROPOSED PROJECT** Start Date: Ending Date: | **14. CONGRESSIONAL DISTRICTS OF:** a. Applicant b. Project |

| | | |
|---|---|---|
| **15. ESTIMATED FUNDING:** | | **16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?** |
| a. Federal | $ .00 | a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE: |
| b. Applicant | $ .00 | |
| c. State | $ .00 | |
| d. Local | $ .00 | b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW |
| e. Other | $ .00 | |
| f. Program Income | $ .00 | **17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** |
| g. TOTAL | $ .00 | ☐ Yes If "Yes" attach an explanation. ☐ No |

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

a. Authorized Representative

| | | |
|---|---|---|
| Prefix | First Name | Middle Name |
| Last Name | | Suffix |
| b. Title | | c. Telephone Number (give area code) |
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424



**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: | Item: | Entry: |
|---|---|---|---|
| 1. | Select Type of Submission. | 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 3. | State use only (if applicable). | 13 | Enter the proposed start date and end date of the project. |
| 4. | Enter Date Received by Federal Agency<br>Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank. | 14. | List the applicant's Congressional District and any District(s) affected by the program or project |
| 5. | Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application. | 15 | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 7. | Select the appropriate letter in the space provided.<br>A. State<br>B. County<br>C. Municipal<br>D. Township<br>E. Interstate<br>F. Intermunicipal<br>G. Special District<br>H. Independent School District<br>I. State Controlled Institution of Higher Learning<br>J. Private University<br>K. Indian Tribe<br>L. Individual<br>M. Profit Organization<br>N. Other (Specify)<br>O. Not for Profit Organization | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 8. | Select the type from the following list:<br>• "New" means a new assistance award.<br>• "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>• "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter:<br>A. Increase Award B. Decrease Award<br>C. Increase Duration D. Decrease Duration | 18 | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |

OMB Approval No. 0348-0040

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

**Standard Form 424B (Rev. 7-97) Back**

# Budget Information — Non-Construction Programs

OMB Approval No. 0348-0044

**Section A - Budget Summary**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**Section B - Budget Categories**

| 6. Object Class Categories | Grant Program, Function or Activity | | | | Total |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a-6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. **Totals** (sum of 6i and 6j) | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ |

**Section C - Non-Federal Resources**

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) **Totals** |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. **Total** (sum of lines 8 - 11) | $ | $ | $ | $ |

**Section D - Forcasted Cash Needs**

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. **Total** (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

**Section E - Budget Estimates of Federal Funds Needed for Balance of the Project**

| (a) Grant Program | **Future Funding Periods (Years)** (b) First | (c) Second | (d) Third | (e) Fourth |
|---|---|---|---|---|
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. **Total** (sum of lines 16-19) | $ | $ | $ | $ |

**Section F - Other Budget Information**

21. Direct Charges | 22. Indirect Charges

23. Remarks

## Instructions for the SF-424A

Public Reporting Burden for this collection of information is estimated to average 3.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

### General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the later case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

### Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a **single** Federal grant program (Federal Domestic Assistance Catalog number) and **not requiring** a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a **single** program **requiring** budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in **Column** (a) and the respective catalog number on each line in Column (b).

For applications pertaining to **multiple** programs where one or more programs **require** a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

### Lines 1-4, Columns (c) through (g)

**For new applications,** leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**For continuing grant program applications,** submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

**For supplemental grants and changes** to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5**—Show the totals for all columns used.

### Section B. Budget Categories

In the column headings (a) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i**—Show the totals of Lines 6a to 6h in each column.

**Line 6j**—Show the amount of indirect cost.

**Line 6k**—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7**—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11**—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)**—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)**—Enter the contribution to be made by the applicant.

**Column (c)**—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)**—Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)**—Enter totals of Columns (b), (c), and (d).

**Line 12**—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f) Section A.

**Section D. Forecasted Cash Needs**

**Line 13**—Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14**—Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15**—Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19**—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20**—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21**—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22**—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23**—Provide any other explanations or comments deemed necessary.

## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: 4c | **Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ |
| **10. a. Name and Address of Lobbying Registrant**<br>(*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*)<br>(*last name, first name, MI*): |
| **11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |
| **Federal Use Only:** | Authorized for Local Reproduction<br>Standard Form LLL (Rev. 7-97) |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

**SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS**

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

OMB No. 1890-0014
(EXP. 1/31/2006)

**Purpose:** The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

**Instructions for Submitting the Survey:** If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

**Applicant's (Organization) Name:** _____

**Applicant's DUNS Number:** _____

**Grant Name:** _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

☐ 3 or Fewer ☐ 15-50
☐ 4-5 ☐ 51-100
☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

☐ Less Than $150,000
☐ $150,000 - $299,999
☐ $300,000 - $499,999
☐ $500,000 - $999,999
☐ $1,000,000 - $4,999,999
☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local )?

☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

☐ Yes ☐ No

SF 424-SUPP (4/2004)

## Survey Instructions on Ensuring Equal Opportunity for Applicants

**Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.**

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

**Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Housing and Urban Development, Office of Departmental Grants Management and Oversight, Room 3156, Washington, D.C. 20410.

**If you have comments or concerns regarding the status of your individual submission of this form, write directly to the address above.**

SF 424-SUPP (4/2004)

# Applicant/Recipient Disclosure/Update Report

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2510-0011 (exp. 12/31/2006)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

## Applicant/Recipient Information

**Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

| 1. Applicant/Recipient Name, Address, and Phone (include area code): ( ) - | 2. Social Security Number or Employer ID Number: - - |
|---|---|
| 3. HUD Program Name | 4. Amount of HUD Assistance Requested/Received |

5. State the name and location (street address, City and State) of the project or activity:

## Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD) , involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form.
***However***, you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

| Department/State/Local Agency Name and Address | Type of Assistance | Amount Requested/Provided | Expected Uses of the Funds |
|---|---|---|---|
| | | | |
| | | | |

(**Note**: Use Additional pages if necessary.)

## Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

| Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first) | Social Security No. or Employee ID No. | Type of Participation in Project/Activity | Financial Interest in Project/Activity ($ and %) |
|---|---|---|---|
| | | | |

(**Note**: Use Additional pages if necessary.)

## Certification

**Warning**: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

| Signature: X | Date: (mm/dd/yyyy) |
|---|---|

**Public reporting burden** for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

**Privacy Act Statement.** Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

**Note**: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

## Instructions

### Overview.

A. Coverage. You must complete this report if:
(1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
(2) You are updating a prior report as discussed below; or
(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General**. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

### Line-by-Line Instructions.

**Applicant/Recipient Information.**
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

**Part I. Threshold Determinations - Applicants Only**

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

**Part II. Other Government Assistance and Expected Sources and Uses of Funds.**

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

**Part III. Interested Parties.**

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

**Note:** A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

**Note** that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

**Notes:**

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

## Logic Model

**U.S. Department of Housing and Urban Development**
**Office of Departmental Grants Management and Oversight**

OMB Approval No. 2535-0114
(Exp. 12/31/2006)

**Program Name:**_____

**Component Name:**_____

| Strategic Goals | Policy Priorities | Problem, Need, Situation | Service or Activity | Benchmarks | | Outcomes | | Measurement Reporting Tools | Evaluation Process |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Output Goal | Output Result | Achievement Outcome Goals | End Results | | |
| 1 | | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| Policy | | Planning | | Intervention | | Impact | | Accountability | |
| | | | | Short Term | | | | a.<br>b.<br>c.<br>d.<br>e. | |
| | | | | Intermediate Term | | | | a.<br>b.<br>c.<br>d.<br>e. | |
| | | | | Long Term | | | | a.<br>b.<br>c.<br>d.<br>e. | |

***HUD's Strategic Goals***

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

***Policy Priorities***

1. Provide Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving the Quality of Life in our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organization in HUD Program Implementation.
5. Participation of Minority-Serving Institutions in HUD Programs
6. Ending Chronic Homelessness within Ten Years.
7. Removal of Barriers to Affordable Housing.

form **HUD-96010** (11/2003)

**Logic Model Instructions** U.S. Department of Housing And Urban Development Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114 (exp. 12/31/2006)

The public reporting burden for this collection of information for the Logic Model is estimated to average 18 hours per response for applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD. HUD may not conduct, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, in the Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2535-0114.

The information submitted in response to the Notice of Funding Availability for the Logic Model is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Instructions:

Responses to rating factor five should be in this format. Your response should be in bullet format rather than narrative. Please read each NOFA carefully to ensure the performance measures requested for this factor are reflected on the logic model form.

Program Name: The HUD funding program under which you are applying. If you are applying for a component of a program please include the Program Name as well as the Component Name.

Component Name: The HUD funding program under which you are applying.

Column 1: ***HUD's Strategic Goals***: Indicate in this column **the number** of the goal(s) that your proposed service or activity is designed to achieve. HUD's strategic goals are:

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

***Policy Priority***: Indicate in this column **the number** of the HUD Policy Priority(ies), if any, your proposed service or activity promotes. Applicants are encouraged to undertake specific activities that will assist the Department in implementing its Policy Priorities. HUD's Policy Priorities are:

1. Provide Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving the Quality of Life in our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organization in HUD Program Implementation.
5. Participation of Minority-Serving Institutions in HUD Programs
6. Ending Chronic Homelessness within Ten Years.
7. Removal of Barriers to Affordable Housing.

Column 2: **Problem, Need, or Situation**: Provide a general statement of need that provides the rationale for the proposed service or activity.

Column 3: **Service or Activity:** Identify the activities or services that you are undertaking in your work plan, which are crucial to the success of your program. Not every activity or service yields a direct outcome.

Column 4 and Column 5: **Benchmarks:** These columns ask you to identify benchmarks that will be used in measuring the progress of your services or activities. Column 4 asks for specific interim or final products (called outputs) that you establish for your program's services or activities. Column 5 should identify the results associated with the product or output. These may be numerical measures characterizing the results of a program activity, service or intervention and are used to measure performance. These outputs should lead to targets for achievement of outcomes. Results should be represented by both the actual # and % of the goal achieved.

Column 4: **Benchmarks/Output Goal:** Set quantifiable output goals, including timeframes. These should be products or interim products, which will allow you and HUD to monitor and assess your progress in achieving your program workplan.

Column 5: **Benchmark/ Output Result:** Report actual result of your benchmarks. The actual result could be number of housing units developed or rehabilitated, jobs created, or number of persons assisted. Outputs may be short, intermediate or long-term. ***(Do not fill out this section with the application)***

Column 6 and Column 7: **Outcomes:** Column 6 and Column 7 ask you to report on your expected and actual outcomes – the ultimate impact you hope to achieve. Column 6 asks you to identify outcomes in terms of the impact on the community, people's lives, changes in economic or social status, etc. Column 7 asks for the actual result of the outcome measure listed in Column 6, which should be updated as applicable.

Column 6: **Outcomes/ Goals:** Identify the outcomes that resulted in broader impacts for individuals, families/households, and/or the community. For example, the program may seek to improve the environmental conditions in a neighborhood, increase affordable housing, increase the assets of a low-income family, or improve self-sufficiency.

Proxy Outcome(s): Often direct measurement of the intended outcome is difficult or even impossible -- to measure. In these cases, applicants/grantees should use a proxy or surrogate measure that corresponds with the desired outcome. For example, improving quality of life in a neighborhood could be measured by a proxy indicator such as increases in home prices or decreases in crime. Training programs could be measured by the participant's increased wages or reading skills. The person receiving the service must meet eligibility requirements of the program.

Column 7: **Outcomes/Actual Result:** Identify specific achievements of outcomes listed in Column 6. ***(Do not fill out this section with the application)***

Column 8: **Measurement Reporting Tools:** (a) List the tools used to track output or outcome information (e.g., survey instrument; attendance log; case report; pre-post test; waiting list; etc); (b) Identify the place where data is maintained, e.g. central database; individual case records; specialized access database, tax assessor database; local precinct; other; (c) Identify the location, e.g. on-site; subcontractor; other; (d) Indicate how often data is required to be collected, who will collect it and how often data is reported to HUD; and (e) Describe methods for retrieving data, e.g. data from case records is retrieved manually, data is maintained in an automated database. This tool will be available for HUD review and monitoring and should be used in submitting reporting information.

Column 9: **Evaluation Process:** Identify the methodology you will periodically use to assess your success in meeting your benchmark output goals and output results, outcomes associated to the achievement of the purposes of the program, as well as the impact that the work has made on the individuals assisted, the community, and the strategic goals of the Department. If you are not meeting the goals and results projected for your performance period, the evaluation process should be used as a tool to ensure that you can adjust schedules, timing, or business practices to ensure that goals are met within your performance period.

form **HUD-96010-I** (11/2003)

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[FR Doc. 04–10716 Filed 5–11–04; 8:45 am]
BILLING CODE 4210–72–C

Federal Register

Wednesday,
May 12, 2004

Part III

# The President

Federal Register
Vol. 69, No. 92
Wednesday, May 12, 2004

# Presidential Documents

Title 3—

The President

**Proclamation 7781 of May 7, 2004**

## Asian/Pacific American Heritage Month, 2004

**By the President of the United States of America**

**A Proclamation**

During Asian/Pacific American Heritage Month, we honor the accomplishments of Asian/Pacific Americans and the many ways they have enriched our society and shaped the character of our Nation through their diverse languages, cultures, and religious beliefs.

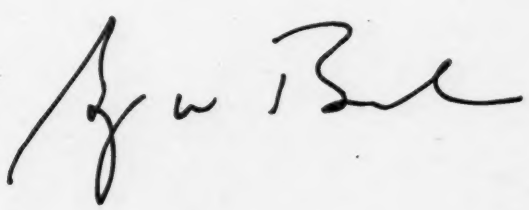
Today, Asian/Pacific Americans are leaders in public service, business, government, science, law, education, athletics, the arts, and many other areas. Their love of family, community, and hard work has helped to uphold our Nation for many generations. Asian/Pacific American entrepreneurs are helping to strengthen our economy and our communities through their hard work and ingenuity, and they inspire a new generation of American innovation through their example.

Throughout our history, Asian/Pacific Americans have been patriots, answering the call to defend our Nation and to protect the blessings of liberty and democracy. Today, in the war on terror, Asian/Pacific Americans serve proudly as they carry on our Nation's noble tradition of advancing the cause of freedom around the world. We are grateful for the sacrifice of our men and women in uniform and those who love and support them as we fight to protect our homeland and make the world safe for democracy.

Today, the more than 13 million Americans of Asian or Pacific Island heritage contribute to the vitality, success, and prosperity of our Nation. To honor the achievements and contributions of Asian/Pacific Americans, the Congress by Public Law 102–450 as amended, has designated the month of May each year as "Asian/Pacific American Heritage Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 2004 as Asian/Pacific American Heritage Month. I call upon the people of the United States to reflect upon the history of Asian/Pacific Americans and their many contributions to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–10910
Filed 5–11–04; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7782 of April 7, 2004**

## National Physical Fitness and Sports Month, 2004

**By the President of the United States of America**

**A Proclamation**

Physical fitness is an integral part of a healthy life and a healthy America. National Physical Fitness and Sports Month provides an opportunity for all Americans to learn more about the benefits of exercise and sports and to make being physically active part of their everyday lives.

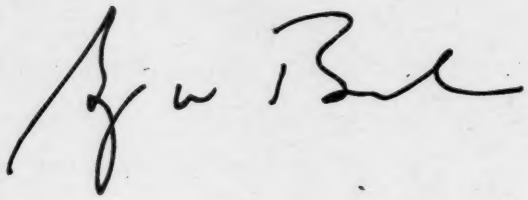
Regular physical activity builds strength and aerobic fitness, provides motivation, promotes relaxation, and facilitates sleep for people of all ages and abilities. Regular exercise—in some cases, simply walking for half an hour—can help reduce the risk of many serious health problems, such as heart disease and diabetes. By participating in sports, individuals also learn teamwork, discipline, and how to accept victory and defeat with grace. These important lessons help build good character and teach strong values.

My Administration has recommended a few simple steps to achieve better health and fitness. Our HealthierUS Initiative promotes daily physical activity, healthy diets, and preventative screenings. It also encourages people to avoid tobacco and drugs, and to make responsible choices about alcohol. Across our country, people are making physical activity part of their daily lives by participating in the President's Challenge, a fitness program that helps them track weekly fitness activities and rewards them for reaching defined fitness goals.

As we observe National Physical Fitness and Sports Month, I urge adults and children to participate in regular physical activity. I encourage parents to make family time active, and I call on Americans to help motivate their friends to have anactive lifestyle. By exercising regularly and participating in sports, we can improve our health, set a positive example for our children, and help build a stronger future for our country.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2004 as National Physical Fitness and Sports Month. I call upon the people of the United States to recognize the importance of daily physical activity and sports for all our citizens, and to make fitness a part of daily life. I also call on all Americans to celebrate this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–10911
Filed 5–11–04; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7783 of May 7, 2004**

## Mother's Day, 2004

**By the President of the United States of America**

**A Proclamation**

President Theodore Roosevelt once said, "The mother is the one supreme asset of national life; she is more important by far than the successful statesman, or business man, or artist, or scientist." Today, mothers continue to be an important part of our national character. On Mother's Day, we honor the women whose steadfast love and wisdom have made America a better place.

During the Civil War, Julia Ward Howe, author of "The Battle Hymn of the Republic," proposed renaming July 4 as Mother's Day and a day dedicated to peace. Anna Reeves Jarvis also began working for a similar holiday and sponsored a Mother's Friendship Day in her hometown to reunite families divided by the war. It was not until 2 years after her mother's death that her daughter, Anna M. Jarvis, started the campaign for the observance of Mother's Day in the United States. By 1911, Mother's Day was observed in nearly every State of the Union, and in 1914, responding to a joint resolution of the Congress, President Woodrow Wilson officially designated Mother's Day a national observance.

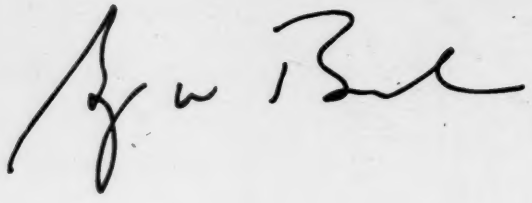
Motherhood is a rewarding and often difficult job. A mother is a child's first teacher and affects a child's life like few others can. Effective mothers can inspire their sons and daughters to love themselves and others, work hard, make healthy choices, serve causes greater than self, and achieve their dreams. Mothers who protect, teach, and nurture their children with all their hearts strengthen their families and help build a better future for our country.

This Mother's Day, we express our heartfelt thanks to our mothers for their unconditional love and guidance. We take time to recognize the many mothers who are supporting their brave sons and daughters in the Armed Forces, and the many others who are themselves serving proudly in defense of America's freedom and security. The service and sacrifice of these women reflect the best of our Nation. They and their loved ones are in our thoughts and prayers.

The Congress, by a joint resolution approved May 8, 1914, as amended (38 Stat. 770), has designated the second Sunday in May each year as "Mother's Day" and has requested the President to call for its appropriate observance. In honor of all of our Nation's mothers, I am pleased to do so.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 9, 2004, as Mother's Day. I commend mothers for the important contributions they make to our society and encourage all Americans to express their love, gratitude, and respect for mothers, and to honor their mothers on this day and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–10912
Filed 5–11–04; 8:45 am]
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**S. 1904/P.L. 108–225**

To designate the United States courthouse located at 400 North Miami Avenue in Miami, Florida, as the "Wilkie D. Ferguson, Jr. United States Courthouse". (May 7, 2004; 118 Stat. 641)

**S. 2022/P.L. 108–226**

To designate the Federal building located at 250 West Cherry Street in Carbondale, Illinois the "Senator Paul Simon Federal Building". (May 7, 2004; 118 Stat. 642)

**S. 2043/P.L. 108–227**

To designate a Federal building in Harrisburg, Pennsylvania, as the "Ronald Reagan Federal Building". (May 7, 2004; 118 Stat. 643)

**Last List May 6, 2004**

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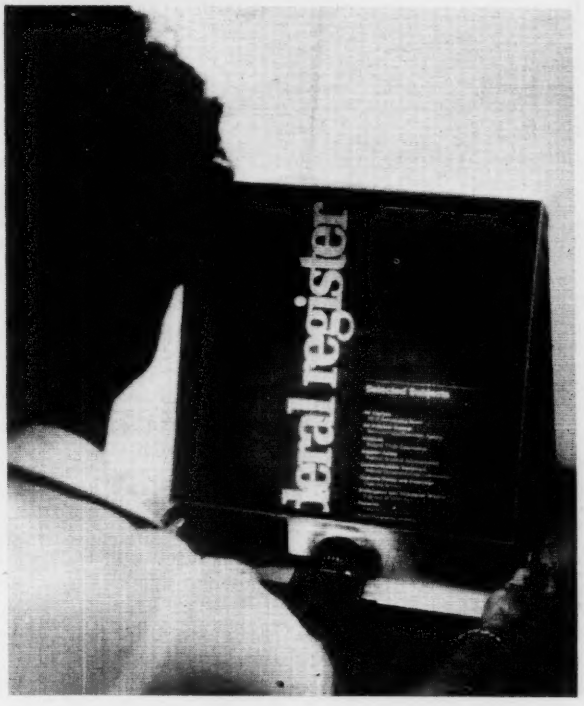


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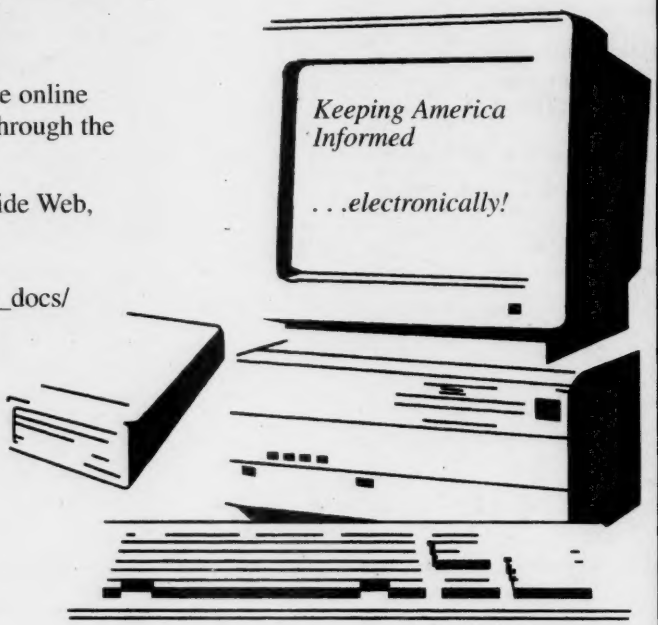


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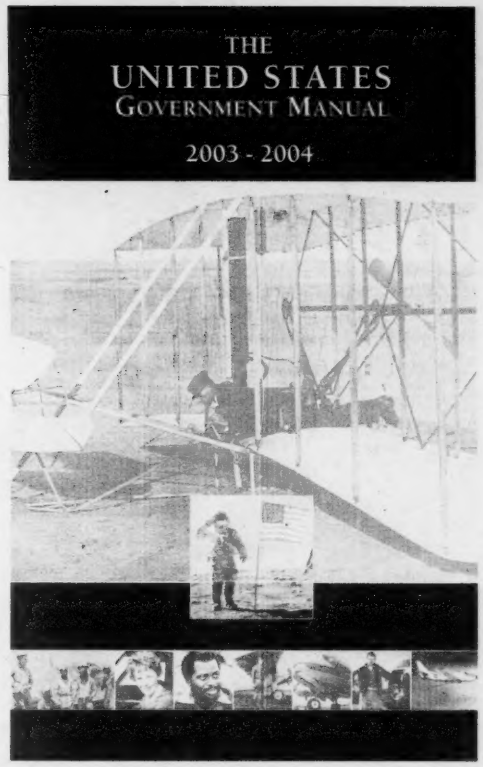


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